

In The Matter Of:

TODD FARBER, ET AL.

v.

DOUGLAS PAUL BEVERIDGE, ET AL.

MICHAEL K. SPODAK, M.D. - Vol. I

April 23, 2013

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**PLAINTIFF'S
EXHIBIT**

3

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

-----X
TODD FARBER, et al., X
Plaintiffs X Civil No.
v. X DKC 11 CV 1580
DOUGLAS PAUL BEVERIDGE, et al., X
Defendants X
-----X

Deposition of

MICHAEL K. SPODAK, M.D.

Towson, Maryland

Tuesday, April 23, 2013

11:30 A.M.

Job No. 1-231650

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Reported By: Sharon D. Livingston, CSR-RPR

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5 26 West Pennsylvania Avenue	5
6 Towson, Maryland 21204-5001	6 EXHIBITS
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1 APPEARANCES	1 PROCEEDINGS
2	2 MICHAEL K. SPODAK, M.D.,
3	3 having been duly administered the oath,
4 ON BEHALF OF THE PLAINTIFFS:	4 testified as follows:
5 KATHARINE O. PORWICK, ESQUIRE	5 EXAMINATION ON BEHALF OF PLAINTIFFS
6 SALSBUURY, CLEMENTS, BEKMAN,	6 BY MS. PORWICK:
7 MARDER & ADKINS, LLC	7 Q Dr. Spodak, my name is Katy Porwick. I
8 300 West Pratt Street, Suite 450	8 represent the Farber family in this litigation. I
9 Baltimore, Maryland 21201	9 know you've given depositions many times before. I
10 (410) 539-6633	10 will tell you that if you don't understand my
11	11 question, if it does not make medical sense, you
12	12 have to let me know so that I can restate it. Fair
13 ON BEHALF OF THE DEFENDANTS:	13 enough?
14 THOMAS V. MCCARRON, ESQUIRE	14 A Yes.
15 SEMMES, BOWEN & SEMMES	15 Q Also if you can't hear me or if I'm
16 25 South Charles Street, Suite 1400	16 mumbling, please tell me because it's obviously
17 Baltimore, Maryland 21201	17 important that you hear my question. Okay?
18 (410) 539-5040	18 A Yes.
19	19 Q We could be here for a little while, so if
20	20 you need a break at any point don't hesitate to tell
21	21 me. I'll be happy to accommodate you. I've been
22	22 provided with a copy of your CV, which I'm going to

2 (Pages 2 to 5)

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<p style="text-align: right;">Page 6</p> <p>1 have marked as Exhibit 1. 2 (Spodak Exhibit 1 marked for 3 identification and attached to transcript.) 4 BY MS. PORWICK: 5 Q You're a board-certified psychiatrist. Is 6 that right? 7 A Yes. 8 Q Are you board-certified in anything else? 9 A Psychiatry and neurology. 10 Q Do you have any subspecialties? 11 A Forensic psychiatry. 12 Q What about child and adolescent 13 psychiatry? 14 A That is not a subspecialty, although over 15 the years I've evaluated numerous children. 16 Q Are you a board-certified child and 17 adolescent psychiatrist? 18 A No. 19 Q Are you board eligible for the child and 20 adolescent psychiatry boards? 21 A I don't believe so, no. 22 Q Where did you do your residency?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q What about your privileges, have your 2 privileges ever been revoked or suspended in any 3 way? 4 A No. 5 Q You had hospital privileges at some point. 6 Is that correct? 7 A Yes. 8 Q And you let them lapse? 9 A I didn't let them lapse. Currently in 10 psychiatry hospital-based people have a separate, I 11 guess for lack of a better term, it's not a 12 specialty but a concentration. People don't 13 typically do inpatient and outpatient anymore, and I 14 confine my practice to outpatient. 15 Q You're still seeing patients in a clinical 16 setting. Is that right? 17 A Yes. 18 Q If you have a patient that has an 19 emergency that requires hospitalization, you're not 20 able to care for them in the hospital. Is that 21 right? 22 A Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 A Johns Hopkins. 2 Q What part of your residency if any was 3 devoted to psychiatry for children and adolescents? 4 A I had at least six months of formal 5 training in child psychiatry. Throughout my 6 residency I dealt with adolescents as well. 7 Q Just to make sure that we're using the 8 terms in the same way, what does child mean to you, 9 what ages? 10 A I would say the cutoff between child and 11 adolescent is typically age 12. Adolescents are 12 considered 12 to 18. Children are considered 13 newborn to age 12. 14 Q Do you currently hold any privileges at 15 any hospital? 16 A No. 17 Q Let me ask it this way. Do you hold a 18 medical license in Maryland? 19 A Yes. 20 Q Has your medical license in Maryland ever 21 been acted unfavorably upon? 22 A No.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q Have you ever had that occasion? Have you 2 ever had that happen? 3 A Ever had patients who needed 4 hospitalization? Numerous times, sure. 5 Q And you couldn't continue to provide them 6 care because you didn't have privileges at the 7 hospital? 8 A I would refer them to a hospital, and when 9 they were discharged I'd pick up their care. 10 Q Let's talk about your professional time. 11 On a scale of 100, just your professional time, not 12 your personal time, how much of it is in a clinical 13 setting? 14 A Probably about 30 percent. The remaining 15 70 percent is forensic. 16 Q How long has that been the case? 17 A The last year or two. Before that the 18 split was more like 60/40 toward forensic. 19 Q Of the forensic work that you do, the 70 20 percent of your time approximately, what of that is 21 criminal, and what is civil? 22 A Probably ten percent is criminal, and the</p>

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<p style="text-align: right;">Page 10</p> <p>1 remainder is civil.</p> <p>2 Q When you are seeing patients in a clinical</p> <p>3 setting are you providing therapy, or are you doing</p> <p>4 medication management?</p> <p>5 A A little of both. More medication</p> <p>6 management, a little bit of therapy.</p> <p>7 Q When you do medication management for a</p> <p>8 patient, are they then seen by another healthcare</p> <p>9 professional for therapy?</p> <p>10 A Can you repeat that?</p> <p>11 Q Sure. When you are doing medication</p> <p>12 management for a patient, are they seen by another</p> <p>13 healthcare provider for ongoing talk therapy?</p> <p>14 A Sometimes. Sometimes it's just medication</p> <p>15 management.</p> <p>16 Q Of your current patients that you see in a</p> <p>17 clinical setting, how many of them are children?</p> <p>18 A None. I don't provide treatment for</p> <p>19 children. I only provide evaluations for children.</p> <p>20 Q In your private practice have you ever</p> <p>21 provided treatment for children?</p> <p>22 A No.</p>	<p style="text-align: right;">Page 12</p> <p>1 other is you're doing an evaluation usually in a</p> <p>2 forensic setting. Most of the ones I've done have</p> <p>3 been for custody, but I've done a number of them for</p> <p>4 traumatic injuries, lead paint exposure, a variety</p> <p>5 of things.</p> <p>6 Q What makes you qualified to do an</p> <p>7 evaluation of a child if you're not qualified to</p> <p>8 treat a child?</p> <p>9 MR. MCCARRON: Objection.</p> <p>10 A I don't understand the question nor how to</p> <p>11 answer it.</p> <p>12 Q Okay. You testified that you don't</p> <p>13 believe you're qualified to treat a child?</p> <p>14 MR. MCCARRON: Objection.</p> <p>15 A I didn't say that. I'm not a specialist</p> <p>16 in child psychiatry. I'm qualified to evaluate</p> <p>17 children. I could probably treat them if I put my</p> <p>18 mind to it, but I haven't had occasion nor an</p> <p>19 interest in treating children. It's usually</p> <p>20 confined to people who are child psychiatrists.</p> <p>21 However, within the practice of general psychiatry</p> <p>22 there's no prohibition to treating children.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q In your career have you ever provided</p> <p>2 treatment for adolescents?</p> <p>3 A Yes.</p> <p>4 Q How many of your current patients are</p> <p>5 adolescents?</p> <p>6 A None.</p> <p>7 Q When was the last time you had a patient</p> <p>8 that was an adolescent?</p> <p>9 A I don't remember. It's been at least a</p> <p>10 few years or more.</p> <p>11 Q Why do you not see children in a clinical</p> <p>12 setting?</p> <p>13 A Because I think the treatment of children</p> <p>14 is best done by child psychiatrists. The evaluation</p> <p>15 of children can often be done by forensic</p> <p>16 psychiatrists.</p> <p>17 Q Why the distinction?</p> <p>18 A Because there's a big difference between</p> <p>19 evaluating children and treating them.</p> <p>20 Q What's the difference?</p> <p>21 A One is you're treating them. You're</p> <p>22 providing medication, prescribing therapy. The</p>	<p style="text-align: right;">Page 13</p> <p>1 Q So you choose not to treat children in a</p> <p>2 clinical setting?</p> <p>3 A Correct.</p> <p>4 Q What's the distinction in terms of</p> <p>5 evaluating them in a forensic setting that you make</p> <p>6 the choice to evaluate them in a forensic setting?</p> <p>7 What is the difference?</p> <p>8 A I think evaluating them in a forensic</p> <p>9 setting is a rather unique procedure which involves</p> <p>10 interviewing the parents, interviewing the children,</p> <p>11 looking at a variety of collateral sources, trying</p> <p>12 to come up with certain opinions that will be</p> <p>13 applicable in a legal setting. That is very</p> <p>14 distinct from treating children where you simply</p> <p>15 take what they say or what their family says at face</p> <p>16 value, deal with the problem at hand, look for</p> <p>17 therapy or look for medication, but you don't</p> <p>18 usually look for a specific causation to a</p> <p>19 reasonable degree of medical certainty, which is</p> <p>20 applicable to a court setting.</p> <p>21 Q Wouldn't you agree with me that although a</p> <p>22 child psychiatrist who is treating a child may not</p>

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<p style="text-align: right;">Page 14</p> <p>1 look for causation to a reasonable degree of medical 2 certainty, they are often looking for the cause of a 3 problem that brings the child to the psychiatric 4 setting? 5 A It depends on the situation. Most often 6 they simply take what the family says at face value 7 and don't make a concerted effort to look at the 8 complete picture to see whether there are other 9 factors that might be a cause or not because they're 10 not focused on reaching an opinion to reasonable 11 medical certainty about causation. If someone comes 12 in and says this is what's bothering me, and I think 13 this is why, they don't do an exhaustive 14 investigation as to whether that is really the case 15 or there are other factors involved or it may be a 16 different cause. 17 Q In fact, though, in terms of treating a 18 patient, don't you have to look at the underlying 19 causes to see if they are accurately reporting or to 20 see if there's another cause that they may not even 21 be considering which in fact may be exacerbating the 22 condition?</p>	<p style="text-align: right;">Page 16</p> <p>1 to help eliminate it so that the child can progress 2 in their therapy? 3 A I think at specific conditions you do the 4 best you can, but you don't typically do the kind of 5 exhaustive review that is in my opinion necessary to 6 appropriate testify in court about causation. 7 Q There is the possibility for a 8 professional to be both a forensic psychiatrist and 9 a child and adolescent psychiatrist. Is that 10 right? 11 A You mean as a treating psychiatrist and a 12 forensic psychiatrist? 13 Q No. To have board certifications in both 14 child and adolescent psychiatry and forensic 15 psychiatry. 16 A Yes, you can have boards in both. 17 Q You told me that you don't see any 18 children in your clinical practice. In your 19 forensic practice how many children do you evaluate 20 on a monthly basis on average? 21 A I don't really know how to give you an 22 average. I can say over the years there have been</p>
<p style="text-align: right;">Page 15</p> <p>1 A I think you make some attempt to do it. 2 Typically you don't do the kind of exhaustive review 3 that you do in forensic psychiatry. You merely take 4 the patient and the family at face value. Your 5 focus is on reducing symptoms, not on looking for a 6 specific cause that will be applicable in a court 7 setting. 8 Q What if the cause is something that keeps 9 triggering the response? In that scenario don't you 10 need to find the cause to be able to either 11 eliminate it or reduce it? For example, if the 12 cause of some type of reaction by a child is the way 13 they're being parented or some type of abuse, don't 14 you need to pinpoint what the cause is to be able to 15 help treat them? 16 A First of all, I think you asked a whole 17 bunch of different questions in your question. I 18 don't understand your question. I'm sorry. 19 Q Let me try and break it down. Wouldn't 20 you agree with me that there are scenarios in which 21 when you're treating a patient in a clinical 22 setting, that you need to in fact identify the cause</p>	<p style="text-align: right;">Page 17</p> <p>1 dozens, if not hundreds, when you add together 2 custody evaluations, traumatic injuries, and lead 3 paint evaluations. 4 Q Are you able to break that down further on 5 a yearly or monthly basis, for example, on average I 6 see two or three kids in a forensic case, or I see 7 one child? 8 A It's probably two or three a year I think 9 over the years, maybe a couple more. 10 Q What about adults in a forensic setting? 11 How frequently do you do evaluations of adults on 12 monthly basis? 13 A Weekly. 14 Q How many weekly? 15 A Usually two a week. 16 Q Is there a board certification for 17 geriatric psychiatry? 18 A For geriatric? 19 Q Yes. 20 A Yes. 21 Q What age are you considered to be a 22 geriatric patient if you're treating patients?</p>

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<p style="text-align: right;">Page 18</p> <p>1 A I don't know that there's a specific 2 cutoff. 3 Q Do you treat geriatric patients in a 4 clinical setting? 5 A Depending on the age cutoff, yes. I treat 6 patients who are 65, 70, thereabouts. 7 Q My mom would not like that to be the 8 definition of geriatric. 9 A I wouldn't either at my age. 10 Q Have you ever treated a patient who either 11 had selective mutism while you were treating them or 12 had a past diagnosis of selective mutism? 13 A I don't recall any I have treated with 14 that condition. 15 Q Would you agree with me that selective 16 mutism is a condition that is more likely to be 17 prevalent in the children population? 18 A In children? Yes, I would. 19 Q What is selective mutism? 20 A What is it? 21 Q Yeah. 22 A You mean like the DSM-IV definition of it?</p>	<p style="text-align: right;">Page 20</p> <p>1 2011. 2 Q What was to be your role in the case as 3 you understood it? 4 A Excuse me? 5 Q What was to be your role in the case as 6 you understood it? 7 A I was asked to review records and do an 8 evaluation of [REDACTED] and determine what if 9 any impact the automobile accident in 2008 had on 10 her. 11 Q Have you ever worked with Mr. McCarron 12 before? 13 A Yes. 14 Q On how many occasions? 15 A I don't know how many occasions, but I've 16 done numerous cases with Semmes, Bowen & Semmes over 17 the years as well as with your law firm. 18 Q In the cases in which you've worked with 19 Mr. McCarron in the past, have they dealt with 20 evaluations of children? 21 A I don't recall any specific ones in the 22 past in that regard, no. I don't recall any that</p>
<p style="text-align: right;">Page 19</p> <p>1 Q Is that going to be your definition? Will 2 you follow the definition of the DSM-IV? 3 A I have no dispute with the DSM-IV 4 definition of it, so yes, I would subscribe to that. 5 Q We're getting ready to have a new edition 6 of the DSM sometime here in the near future. Is 7 that right? 8 A I believe it's due out in May of this 9 year. 10 Q Do you know whether there's any change in 11 the definition of selective mutism between the 12 DSM-IV and the new version, the DSM-V? 13 A No, I don't. 14 Q Have you ever done a forensic evaluation 15 of a child regarding selective mutism before? 16 A I suspect over the years there have been 17 children who have had it, but I have not done one 18 specifically to determine whether the child had it 19 or not. 20 Q When were you first contacted about this 21 case? 22 A I believe sometime over the summer of</p>	<p style="text-align: right;">Page 21</p> <p>1 have involved evaluations of children. 2 Q After Mr. McCarron or someone in his 3 office contacted you about participation in the case 4 were you provided with materials? 5 A Yes. 6 Q Did you review materials regarding Lindsey 7 Farber prior to your evaluation of her? 8 A Yes. 9 Q I have been provided by Mr. McCarron with 10 a copy of your report and a copy of something called 11 a table of contents. Did you author this? 12 A Yes. I would add that since my submitting 13 the report I have been provided with some additional 14 records. 15 MS. PORWICK: If we could mark this as 16 Exhibit 2, please. 17 (Spodak Exhibit 2 marked for 18 identification and attached to transcript.) 19 BY MS. PORWICK: 20 Q What's listed on Exhibit 2 are the 21 materials that you had reviewed prior to authoring 22 your report?</p>

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<p style="text-align: right;">Page 22</p> <p>1 A Yes.</p> <p>2 Q And since that time you've been provided,</p> <p>3 I presume with additional depositions and the report</p> <p>4 of plaintiff's rebuttal expert Dr. Brian</p> <p>5 Zimnitzky?</p> <p>6 A As well as medical records.</p> <p>7 Q I want to ask you a few questions about</p> <p>8 what certain things mean here. Number 5 says</p> <p>9 miscellaneous. Do you know what that is?</p> <p>10 A Miscellaneous in this case consists of</p> <p>11 medical records from a variety of sources.</p> <p>12 Q May I look at your number 5, please?</p> <p>13 Thank you. There are highlightings on these</p> <p>14 records. Did you put on the highlights?</p> <p>15 A Yes, except possibly for the dates. I</p> <p>16 have one of my office assistants highlight the</p> <p>17 dates. Anything else other than the date is</p> <p>18 highlighted by me.</p> <p>19 Q And you highlight things that you think</p> <p>20 are significant?</p> <p>21 A I'm sorry. Once again.</p> <p>22 Q I mumbled. I apologize. You highlight</p>	<p style="text-align: right;">Page 24</p> <p>1 these are copies that you copied from other</p> <p>2 locations, or did you pull them from other</p> <p>3 locations?</p> <p>4 A No. I think they're copies that are also</p> <p>5 contained in other locations.</p> <p>6 Q Number 6 on your list is CO. Is that</p> <p>7 complaint?</p> <p>8 A Yes.</p> <p>9 Q Number 7 is PL ATI. Is that plaintiff's</p> <p>10 answers to interrogatories?</p> <p>11 A Yes.</p> <p>12 Q Number 9 is CCAS, and it lists the name</p> <p>13 Ruth Simon, LCSW-C. What is CCAS?</p> <p>14 A Child Center and Adolescent Services.</p> <p>15 Q You can have number 5 back. Thank you for</p> <p>16 allowing me to review it. While you're down there,</p> <p>17 number 16 is articles. Could you please pull those</p> <p>18 out? The articles that are encompassed in number</p> <p>19 16, who gathered these?</p> <p>20 A I did.</p> <p>21 Q When in terms of your work on the case did</p> <p>22 you put together tab 16?</p>
<p style="text-align: right;">Page 23</p> <p>1 things that you think are significant?</p> <p>2 A They're either significant, or I'm not</p> <p>3 sure if they're significant until further records</p> <p>4 come in. Some I put on a timeline. Some I just</p> <p>5 highlight because I want to review other things to</p> <p>6 see how they fit in chronologically. They're</p> <p>7 highlighted for several reasons.</p> <p>8 Q Do you know who put this packet of</p> <p>9 miscellaneous materials that you've included under</p> <p>10 number 5, which are medical records and school</p> <p>11 records?</p> <p>12 A Do I know who printed them?</p> <p>13 Q Who put them together in this fashion?</p> <p>14 A I did.</p> <p>15 Q And why?</p> <p>16 A I'm not sure. I mean at the time when I</p> <p>17 went through records I pulled records that I thought</p> <p>18 might have some particular significance out of the</p> <p>19 other records. Some ended up having significance.</p> <p>20 Some didn't.</p> <p>21 Q Are the records that are included in</p> <p>22 number 5 also included in other places, meaning</p>	<p style="text-align: right;">Page 25</p> <p>1 A Looks like from the printout on the top of</p> <p>2 the page, October 2011. I think they were in the</p> <p>3 fall of 2011.</p> <p>4 Q Why did you pull articles on selective</p> <p>5 mutism?</p> <p>6 A Because, as I indicated earlier, I hadn't</p> <p>7 evaluated someone with selective mutism, and I</p> <p>8 wanted to review the literature and see particularly</p> <p>9 whether there was any information or research about</p> <p>10 causation and etiology for selective mutism.</p> <p>11 Q Did you print out all of the articles that</p> <p>12 you found, or do you ever read articles online and</p> <p>13 don't print them all out?</p> <p>14 A Yes, I read articles online that I do not</p> <p>15 print out. I attempted to print out ones that</p> <p>16 focused primarily on any information related to</p> <p>17 causation or etiology.</p> <p>18 Q I'd like to have these marked as Exhibit</p> <p>19 3. Are you okay with me putting the exhibit sticker</p> <p>20 on the tab 16?</p> <p>21 A Sure. That's fine.</p> <p>22 (Spodak Exhibit 3 marked for</p>

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 26</p> <p>1 identification and attached to transcript.)</p> <p>2 BY MS. PORWICK:</p> <p>3 Q Other than this research that you did in</p> <p>4 October of 2011 or thereabouts, have you gone on to</p> <p>5 do any additional research regarding selective</p> <p>6 mutism?</p> <p>7 A Recently I did a computer search to see if</p> <p>8 there was any updated information. I have also</p> <p>9 reviewed the articles cited by Dr. Zimnitzky in his</p> <p>10 report.</p> <p>11 Q When you did a research to see if there</p> <p>12 had been any updated articles, did you come up with</p> <p>13 anything?</p> <p>14 A If I did, they'd be in there. I don't</p> <p>15 really recall specifically. There meaning Exhibit</p> <p>16 3.</p> <p>17 Q Tab 17 in your table of contents is</p> <p>18 correspondence, slash, miscellaneous. Is that</p> <p>19 correspondence that you had with Mr. McCarron?</p> <p>20 A Yes.</p> <p>21 Q And what is the miscellaneous?</p> <p>22 A I think that had to do with correspondence</p>	<p style="text-align: right;">Page 28</p> <p>1 A Shady Grove. I'm sorry.</p> <p>2 Q That's okay. Number 27 says depo notes.</p> <p>3 Is that the notes that another witness compiled for</p> <p>4 their deposition, or is that notes that you prepared</p> <p>5 for your deposition?</p> <p>6 A Neither. Those are notes that I made as I</p> <p>7 reviewed the various depositions.</p> <p>8 Q Can you please pull 27? Thank you.</p> <p>9 MS. PORWICK: I'd like to have that marked</p> <p>10 as Exhibit 5.</p> <p>11 (Spodak Exhibit 5 marked for</p> <p>12 identification and attached to transcript.)</p> <p>13 BY MS. PORWICK:</p> <p>14 Q Just so you know, Doctor, we'll make</p> <p>15 copies of all of these and return the originals to</p> <p>16 you. What medical records and depositions and other</p> <p>17 materials have you received since the time you</p> <p>18 compiled the table of contents?</p> <p>19 A That ends at 39?</p> <p>20 Q Correct.</p> <p>21 A Here is through 45. In addition to that I</p> <p>22 haven't had a chance to add these to the table of</p>
<p style="text-align: right;">Page 27</p> <p>1 I generated and a chronology dating back to my first</p> <p>2 attempt at doing an evaluation in August 2012, some</p> <p>3 affidavits, some e-mails. Just to simplify things,</p> <p>4 if you look at number 36, there's another folder on</p> <p>5 correspondence. Some of it's duplicative, but it's</p> <p>6 all correspondence.</p> <p>7 Q May I please see 17? Thank you. Who</p> <p>8 typed up the [REDACTED] chronologies for August</p> <p>9 13, 2012?</p> <p>10 A Who dictated them or who physically typed</p> <p>11 them?</p> <p>12 Q Fair enough. Did you dictate them?</p> <p>13 A I dictated them. My typist typed them.</p> <p>14 MS. PORWICK: If I could have tab 17</p> <p>15 marked as Exhibit 4, please.</p> <p>16 (Spodak Exhibit 4 marked for</p> <p>17 identification and attached to transcript.)</p> <p>18 BY MS. PORWICK:</p> <p>19 Q Number 22 is the letters SGAH. What does</p> <p>20 that stand for?</p> <p>21 A Spring Grove Adventist Hospital.</p> <p>22 Q You mean Shady Grove Adventist Hospital?</p>	<p style="text-align: right;">Page 29</p> <p>1 contents, but I would also add the deposition of</p> <p>2 Michelle Ann Vaca, the deposition of Johanna Dushek,</p> <p>3 the deposition of Theresa Kurtz, Dr. Zimnitzky's</p> <p>4 report and the articles that he cited in his report.</p> <p>5 Q Can you please pull 40, 41 and 45? Thank</p> <p>6 you. We'll mark tab 40 as Exhibit 6, tab 41 will be</p> <p>7 Exhibit 7, and tab 45 will be Exhibit 8.</p> <p>8 (Spodak Exhibits 6, 7 and 8 marked for</p> <p>9 identification and attached to transcript.)</p> <p>10 A One other thing that I was provided I</p> <p>11 forgot to mention were the redacted notes from Ruth</p> <p>12 Simon relating to the treatment of Brooke Farber. I</p> <p>13 don't think I mentioned those earlier.</p> <p>14 Q My guess is there's one or two notes from</p> <p>15 the mom's breast cancer treatment included in that</p> <p>16 packet. Is that right?</p> <p>17 A Whatever is in the packet, yeah. Some of</p> <p>18 it appears to be from Brooke and from the mother.</p> <p>19 MS. PORWICK: The next thing I'm going to</p> <p>20 have marked as Exhibit 9 is the timeline. It is 14</p> <p>21 pages.</p> <p>22 (Spodak Exhibit 9 marked for</p>

8 (Pages 26 to 29)

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1 identification and attached to transcript.)
 2 BY MS. PORWICK:
 3 Q Who prepared this timeline?
 4 A Excuse me?
 5 Q Who prepared this timeline?
 6 A I did.
 7 Q Did you dictate it, and then it was typed
 8 by someone else, or did you type it?
 9 A Neither.
 10 Q How was it prepared?
 11 A It was prepared by my highlighting, and
 12 the things I wanted to put on the timeline I would
 13 turn up, put a clip on it, and my secretary would go
 14 through and type them on the timeline based on what
 15 I highlighted.
 16 Q Okay. Was this timeline prepared prior to
 17 your evaluation of [REDACTED] LF
 18 A When you say prior to the evaluation, I
 19 saw her on December 12th, so it was completed prior
 20 to my either seeing her or certainly prior to doing
 21 the report.
 22 Q I've reviewed the timeline, and it appears

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1 to me that it is compiled of only the medical
 2 records. Anything that occurred in a deposition is
 3 not included in the timeline. Is that right?
 4 A Not deposition, but I did have a separate
 5 academic timeline for the school records.
 6 Q Exactly. We're on the same page. I'll
 7 have that marked as Exhibit 10.
 8 (Spodak Exhibit 10 marked for
 9 identification and attached to transcript.)
 10 BY MS. PORWICK:
 11 Q Just so I understand your note keeping,
 12 the timeline is information that's included in the
 13 medical records, which is Exhibit 9, and the
 14 academic timeline is information from the school
 15 records, which is Exhibit 10, and then you kept
 16 separate notes regarding your review of the
 17 depositions. Is that right?
 18 A Yes.
 19 Q Did Mr. McCarron provide you with any
 20 research regarding selective mutism in this case?
 21 By that, I mean any medical articles or texts.
 22 A His office provided me with the articles

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1 cited by Dr. Zimmitsky. Other than that, no.
 2 Q In your forensic work are you able to
 3 break down the percentage of time you testify on
 4 behalf of the plaintiff versus the percentage of
 5 time you testify on behalf of the defendant?
 6 A For testimony, probably the vast majority
 7 is on behalf of the defense.
 8 Q What about just when you've been retained?
 9 Is the percentage similar for cases in which you've
 10 been retained even when you don't ultimately go on
 11 to testify?
 12 A Over the years it's probably been 60,
 13 maybe some years 70 percent weighted toward defense
 14 and 30 to 40 percent weighted toward plaintiff, as
 15 well as over the years I'm an independent examiner
 16 for the Workers Compensation Commission, Department
 17 of Labor, so I wouldn't count those for either
 18 side.
 19 Q Nor would you count your criminal work
 20 because that's not identified at plaintiff or
 21 defendant. Is that right?
 22 A Well, in my earlier years I did

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1 evaluations for the prosecution, but since I left
 2 state service at Clifton Perkins Hospital they've
 3 been almost exclusively for the defense.
 4 Q What do you currently charge per hour for
 5 your forensic work?
 6 A 500 per hour.
 7 Q Does that include review of materials as
 8 well as evaluation time?
 9 A Yes.
 10 Q What about time giving testimony, is that
 11 any different?
 12 A If it's in the general Baltimore area it's
 13 the same. If it's out of this area it's usually a
 14 flat rate per day.
 15 Q And what is your flat rate per day?
 16 A 5,000 dollars.
 17 Q Do you know how much money you made in
 18 2012 from your forensic work?
 19 A Probably more recently as I'm getting
 20 older I've cut back on time. I'm probably doing
 21 about 10 to 15 hours a week. Back in 2012 it was
 22 480 an hour, so whatever the math works out to for

9 (Pages 30 to 33)

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<p style="text-align: right;">Page 34</p> <p>1 that.</p> <p>2 Q Do you know what the fees that you've</p> <p>3 generated to date in this case are?</p> <p>4 A I don't have a specific number, but</p> <p>5 looking at the size of the case and the amount of</p> <p>6 time I've spent, I would guesstimate somewhere</p> <p>7 between 10 and 15,000 dollars. I would point out</p> <p>8 it's not that I've made. It's that I've billed.</p> <p>9 Q Fair enough.</p> <p>10 A I don't get to keep it all with taxes and</p> <p>11 all those things.</p> <p>12 Q It was a poorly worded question. I</p> <p>13 appreciate your fixing it. In 2006 you filed a</p> <p>14 lawsuit regarding disability insurance. Is that</p> <p>15 right?</p> <p>16 A Yes.</p> <p>17 Q What was the claim of the disability? How</p> <p>18 were you disabled?</p> <p>19 A With all due respect, I think I'm going to</p> <p>20 decline to answer your questions unless I have a</p> <p>21 personal attorney present.</p> <p>22 MS. PORWICK: Can you tell me what the</p>	<p style="text-align: right;">Page 36</p> <p>1 Q At what point did you stop receiving</p> <p>2 disability benefits?</p> <p>3 A In 2007, 2008 at the latest.</p> <p>4 Q And just to be clear, I'm going to ask the</p> <p>5 questions that I want answers to, and if you're</p> <p>6 going to decline to answer them, we may have to go</p> <p>7 through a little rignmarole here so that I can get a</p> <p>8 court order on some things I want some answers to.</p> <p>9 You filed a lawsuit in 2006 against the Berkshire</p> <p>10 Life Insurance Company and the Guardian Life</p> <p>11 Insurance Company of America. Is that right?</p> <p>12 A Yes.</p> <p>13 Q And in that case you alleged that you had</p> <p>14 been disabled and that they had failed to pay the</p> <p>15 proper monthly disability payments. Is that right?</p> <p>16 MR. MCCARRON: If I could have a</p> <p>17 continuing objection on this line of questioning.</p> <p>18 MS. PORWICK: Absolutely.</p> <p>19 A I filed a lawsuit about residual</p> <p>20 disability, not disability.</p> <p>21 Q And in your lawsuit you made a claim that</p> <p>22 you had suffered a cognitive impairment which</p>
<p style="text-align: right;">Page 35</p> <p>1 time is on that?</p> <p>2 THE REPORTER: It is 12:11 P.M.</p> <p>3 BY MS. PORWICK:</p> <p>4 Q Just so the record is clear, I have a</p> <p>5 series of questions that I want to ask you regarding</p> <p>6 your disability case. Are you going to refuse to</p> <p>7 answer them all unless there is a court order or</p> <p>8 unless you have an attorney present?</p> <p>9 A Based on issues of medical privacy, yes.</p> <p>10 Q You are aware that the federal court in</p> <p>11 the past has unsealed these records in light of the</p> <p>12 fact that you work as a forensic expert and</p> <p>13 determined that they aren't private, aren't you?</p> <p>14 A I'm aware that they've unsealed parts of</p> <p>15 them, yes.</p> <p>16 Q And yet you're still unwilling to answer</p> <p>17 questions regarding your disability case?</p> <p>18 A I'm asserting medical privacy to answer</p> <p>19 questions about my personal medical history.</p> <p>20 Q Are you still currently receiving</p> <p>21 disability benefits?</p> <p>22 A No.</p>	<p style="text-align: right;">Page 37</p> <p>1 rendered you disabled. Is that right?</p> <p>2 A I'm going to decline to answer that about</p> <p>3 my medical history.</p> <p>4 Q And that you had spent a period of time in</p> <p>5 the hospital which precipitated your disability. Is</p> <p>6 that right?</p> <p>7 A Again I'm going to respectfully decline to</p> <p>8 answer questions about my personal medical history.</p> <p>9 Q And in fact, in the complaint you yourself</p> <p>10 categorized them as serious medical conditions and</p> <p>11 problems, the onset of which was December 2nd, 2002.</p> <p>12 Is that right?</p> <p>13 A All I would say is the records speak for</p> <p>14 themselves, and I'm not going to provide personal</p> <p>15 medical information.</p> <p>16 Q What was the outcome of this lawsuit? You</p> <p>17 filed for breach of contract. Is that right?</p> <p>18 A Excuse me?</p> <p>19 Q You filed for breach of contract as the</p> <p>20 basis for the lawsuit?</p> <p>21 A There was a confidential settlement.</p> <p>22 Q Did you give a deposition in association</p>

10 (Pages 34 to 37)

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<p style="text-align: right;">Page 38</p> <p>1 with that case?</p> <p>2 A Yes.</p> <p>3 Q Did you undergo an IME in association with</p> <p>4 that case?</p> <p>5 A I don't recall undergoing a defense IME,</p> <p>6 no.</p> <p>7 Q Was the defense position in this case that</p> <p>8 you in fact were not disabled and could work?</p> <p>9 A First of all, it related to residual</p> <p>10 disability, not disability. Again all I can say is</p> <p>11 you'd have to ask the defense their position. I'm</p> <p>12 not a lawyer, but the records speak for themselves.</p> <p>13 Q As the plaintiff you didn't have an</p> <p>14 understanding about what the defense's position</p> <p>15 was?</p> <p>16 A If you're asking me what their position</p> <p>17 was, I think you'd have to ask the defense.</p> <p>18 Q I'm asking you what your understanding of</p> <p>19 their position was.</p> <p>20 A There was a contractual dispute. Beyond</p> <p>21 that it would get into a lot of legal issues that I</p> <p>22 don't feel qualified as a physician to comment on.</p>	<p style="text-align: right;">Page 40</p> <p>1 A Again I think I'll decline to answer that</p> <p>2 on the basis of medical privacy.</p> <p>3 Q Did you talk with any person about this</p> <p>4 case other than Dr. Richmond and Mr. McCarron or</p> <p>5 someone from his office?</p> <p>6 A No.</p> <p>7 Q You sought the involvement of Dr. Lee</p> <p>8 Richmond in this case. Is that right?</p> <p>9 A Yes.</p> <p>10 Q Why?</p> <p>11 A Because I thought it might be beneficial</p> <p>12 to my evaluation for her to do psychological testing</p> <p>13 of Lindsey, and she does psychological testing of</p> <p>14 children.</p> <p>15 Q Is that something that you do not do in</p> <p>16 your professional practice, psychological testing of</p> <p>17 children?</p> <p>18 A Yes.</p> <p>19 Q And what did you ask her to do?</p> <p>20 A I asked her to do a battery of</p> <p>21 psychological tests and report to me on the</p> <p>22 findings.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q The disability that you claimed commenced</p> <p>2 on December 2nd, 2002, was it a cognitive</p> <p>3 disability?</p> <p>4 A Again I will decline to answer that on the</p> <p>5 basis of medical privacy.</p> <p>6 Q At the time period in which you are</p> <p>7 claiming the disability and residual disability</p> <p>8 benefits did you continue to provide forensic</p> <p>9 psychiatry services?</p> <p>10 A Yes.</p> <p>11 Q At any point in time have you stopped</p> <p>12 providing in your career clinical psychiatry</p> <p>13 services?</p> <p>14 A Have I stopped?</p> <p>15 Q Has there ever been a period where you've</p> <p>16 not provided those?</p> <p>17 A You mean other than when I was in the</p> <p>18 hospital?</p> <p>19 Q At any point in time.</p> <p>20 A When I was hospitalized I didn't provide</p> <p>21 clinical psychiatry services.</p> <p>22 Q For how long a period was that?</p>	<p style="text-align: right;">Page 41</p> <p>1 Q Did you specifically choose her?</p> <p>2 A Yes.</p> <p>3 Q Why?</p> <p>4 A Because I've worked with her for probably</p> <p>5 20-plus years, I know her work, I'm confident of her</p> <p>6 abilities, and she is capable of doing child</p> <p>7 psychological evaluations.</p> <p>8 Q How many instances have you worked with</p> <p>9 her on an occasion like this where you've asked her</p> <p>10 to do an evaluation for you in conjunction with your</p> <p>11 forensic work?</p> <p>12 A I would guesstimate going back to the</p> <p>13 1980s there's probably been somewhere between 12 to</p> <p>14 20, in that range.</p> <p>15 Q Have those all been children, or have you</p> <p>16 asked for her assistance in cases which involved</p> <p>17 adolescents or adults?</p> <p>18 A I can say no to adults. I don't recall</p> <p>19 whether some of the 12 to 20 were adolescents or</p> <p>20 children, using the 12-year-old age as the cutoff.</p> <p>21 Q Did you personally call Dr. Richmond to</p> <p>22 explain the case to her?</p>

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<p style="text-align: right;">Page 42</p> <p>1 A Probably not.</p> <p>2 Q Who would have done that?</p> <p>3 A That would have been someone in my front</p> <p>4 office staff.</p> <p>5 Q Did you ever speak with her prior to her</p> <p>6 evaluation of [REDACTED] LF</p> <p>7 A Probably. It would be my standard</p> <p>8 practice to do that to go over what I'd like her to</p> <p>9 do.</p> <p>10 Q And do you have a recollection of that</p> <p>11 conversation?</p> <p>12 A Not specifically. If it was a standard</p> <p>13 conversation, I would explain what my task was, to</p> <p>14 do an evaluation, and ask her to do psychological</p> <p>15 testing of the child, whatever tests she thought was</p> <p>16 appropriate, and report on the findings.</p> <p>17 Q Why did you want psychological testing on</p> <p>18 Lindsey? What was it about the presentation of this</p> <p>19 case that made you think that you needed this as a</p> <p>20 component to your forensic work?</p> <p>21 A First I would regard psychological testing</p> <p>22 as a fairly standard component to my forensic work.</p>	<p style="text-align: right;">Page 44</p> <p>1 look at the date when she did her evaluation. I</p> <p>2 believe she did it first.</p> <p>3 Q I'll tell you that according to her</p> <p>4 report, she actually did hers in September. I'll</p> <p>5 refresh your recollection.</p> <p>6 A That would be after I obtained background</p> <p>7 information from [REDACTED] LF another and before I saw</p> <p>8 Lindsey.</p> <p>9 Q Do you typically schedule them on the same</p> <p>10 day?</p> <p>11 A Typically schedule what?</p> <p>12 Q Do you typically schedule the evaluations</p> <p>13 that Dr. Richmond is going to perform and your</p> <p>14 evaluation of the patient on the same day?</p> <p>15 A I guess it varies depending on scheduling</p> <p>16 issues, whether the child has to miss school or not,</p> <p>17 whether they're coming from a different state.</p> <p>18 There's a variety of factors that go into it.</p> <p>19 Sometimes yes. Sometimes no.</p> <p>20 Q Do you find that it impacts your</p> <p>21 evaluation when you are evaluating a child after</p> <p>22 they've already undergone a battery of tests by a</p>
<p style="text-align: right;">Page 43</p> <p>1 In adults I have a computerized test battery I</p> <p>2 administer. In children I typically ask</p> <p>3 Dr. Richmond to do the evaluations. If it's</p> <p>4 neuropsychological issues or neurocognitive issues,</p> <p>5 there's a neuropsychologist that I'm familiar with,</p> <p>6 and I often ask him to do the evaluation. I</p> <p>7 consider psychological testing a fairly standard</p> <p>8 component of a forensic psychiatric evaluation.</p> <p>9 Q Who is the neuropsychologist that you</p> <p>10 often work with?</p> <p>11 A Usually I work with Dr. Arthur Horton,</p> <p>12 H-o-r-t-o-n.</p> <p>13 Q Is there any other psychologist you would</p> <p>14 work with if Dr. Richmond wasn't available or wasn't</p> <p>15 interested in participating in the case?</p> <p>16 A That occasion hasn't come up yet.</p> <p>17 Q Fair enough.</p> <p>18 A If it did, I'd ask her for a referral to</p> <p>19 somebody else probably.</p> <p>20 Q She did her evaluation of [REDACTED] LF</p> <p>21 first in terms of the chronology. Is that right?</p> <p>22 A I believe she did. I'd actually have to</p>	<p style="text-align: right;">Page 45</p> <p>1 psychologist?</p> <p>2 A Sure, it's possible depending on their</p> <p>3 age. That would be another reason not to do it on</p> <p>4 the same day, so they don't get fatigued, things</p> <p>5 like that.</p> <p>6 Q What was the outcome of Dr. Richmond's</p> <p>7 evaluation of [REDACTED] LF</p> <p>8 A It's outlined in her report. Do you want</p> <p>9 me to read the report?</p> <p>10 Q What's your understanding of how she</p> <p>11 evaluated her?</p> <p>12 A Basically she tested normal for her age.</p> <p>13 Q Is that what you expected?</p> <p>14 A I didn't have any expectations. That's</p> <p>15 why I asked her to do the testing. I would be</p> <p>16 surprised I guess if she found something abnormal</p> <p>17 because my read of the records up till certainly</p> <p>18 2012 suggested that she was doing fairly well</p> <p>19 overall.</p> <p>20 Q Did you have a conversation with LF</p> <p>21 Dr. Richmond about her evaluation of [REDACTED] prior</p> <p>22 to receiving her report?</p>

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<p style="text-align: right;">Page 46</p> <p>1 A Again my standard practice is to basically</p> <p>2 ask her what she found. That would be the extent of</p> <p>3 it. I don't recall specifically, but likely I would</p> <p>4 have. That would have been my standard practice.</p> <p>5 Q Does anything stick out about the</p> <p>6 conversation that you had with Dr. Richmond in this</p> <p>7 case?</p> <p>8 A Assuming I had one, no, nothing sticks</p> <p>9 out.</p> <p>10 Q Is it typical when you're doing an</p> <p>11 evaluation of a child to do an interview of one or</p> <p>12 both of the parents?</p> <p>13 A Yes.</p> <p>14 Q Why?</p> <p>15 A Because I think it's important to provide</p> <p>16 collateral information because, depending on the</p> <p>17 child's age, especially when they're young, around</p> <p>18 [REDACTED] age, they're not a very good historian for</p> <p>19 anything meaningful.</p> <p>20 Q In your interview with [REDACTED] mom did</p> <p>21 you learn anything different from the records and</p> <p>22 the materials that you had received?</p>	<p style="text-align: right;">Page 48</p> <p>1 question. The reduced work schedule of the mother,</p> <p>2 does that indicate it's a result of [REDACTED] LF</p> <p>3 A It doesn't say, but my recollection of the</p> <p>4 information from Mrs. Farber was that she had a</p> <p>5 reduced work schedule after the accident but not</p> <p>6 before.</p> <p>7 Q Did you ask her whether she had a reduced</p> <p>8 schedule before and then returned and then had a</p> <p>9 reduced schedule again after?</p> <p>10 A That would be the standard history, but I</p> <p>11 didn't have these notes at the time I evaluated her</p> <p>12 to specifically ask her about what was in them.</p> <p>13 Q Did you have the notes from the employment</p> <p>14 records from GW Hospital which indicated that the</p> <p>15 mom had taken a short period of leave to care for</p> <p>16 [REDACTED] older sister Brooke?</p> <p>17 A I don't think I've been provided with any</p> <p>18 personnel records on Mrs. Farber, so the answer</p> <p>19 would be no. The note from April 17th, 2008, which</p> <p>20 is about a month before the accident, describes</p> <p>21 [REDACTED] as out of control, demanding, screaming and</p> <p>22 scratching to get her way. My recollection of</p>
<p style="text-align: right;">Page 47</p> <p>1 A I don't know if I could sit here and tell</p> <p>2 you what's different and what's the same without</p> <p>3 going through page by page of the history. I don't</p> <p>4 think I learned anything substantively. Actually I</p> <p>5 did learn something very substantively different. I</p> <p>6 think there was a significant effort on [REDACTED] LF</p> <p>7 mother's part to kind of minimize the severity of</p> <p>8 [REDACTED] problems predating the accident</p> <p>9 particularly reflected in the notes I received most</p> <p>10 recently from Ruth Simon, the redacted notes.</p> <p>11 Q And what did those redacted notes from</p> <p>12 Ruth Simon tell you with regard to [REDACTED] LF</p> <p>13 condition predating the accident?</p> <p>14 A Going back to the time frame of 2007 and 8</p> <p>15 predating the accident, for example, on July 18th,</p> <p>16 '07 [REDACTED] LF described as out of control behavior,</p> <p>17 pushes limits, ignores rules, parents give in, feel</p> <p>18 powerless. The note of sometime in '07 before June,</p> <p>19 although it's not clear the exact date, there's a</p> <p>20 notation that the mother had a reduced work</p> <p>21 schedule.</p> <p>22 Q Before you leave that note let me ask a</p>	<p style="text-align: right;">Page 49</p> <p>1 Mrs. Farber's description of [REDACTED] LF before the</p> <p>2 accident basically was that she had a couple issues,</p> <p>3 but she was really doing pretty well. There's a</p> <p>4 bunch of notes about [REDACTED] LF being very mean to her</p> <p>5 sister. There's one in 2008 before the accident.</p> <p>6 [REDACTED] LF has been highly anxious and often</p> <p>7 oppositional. [REDACTED] LF has been our high maintenance</p> <p>8 child until the past two years when she has become</p> <p>9 even more clingy, demanding, and occasionally</p> <p>10 totally out of control with screaming, scratching,</p> <p>11 kicking and hitting. She is extremely attached to</p> <p>12 her mother. In January 2008 inability to control</p> <p>13 [REDACTED] LF, refused setting limits. Those are the</p> <p>14 substance of what I learned from the records, and I</p> <p>15 thought Mrs. Farber really markedly minimized</p> <p>16 [REDACTED] LF situation prior to the accident.</p> <p>17 Q In any of the records that you reviewed</p> <p>18 regarding [REDACTED] LF before the automobile collision</p> <p>19 that's at issue in this case, was she diagnosed with</p> <p>20 selective mutism?</p> <p>21 A No.</p> <p>22 Q In fact, you'd agree with me that upon</p>

13 (Pages 46 to 49)

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<p style="text-align: right;">Page 50</p> <p>1 reviewing those records, it appears at least she was</p> <p>2 verbal to the extent that she was oppositional, out</p> <p>3 of control, and yelling at other members of her</p> <p>4 family. Is that right?</p> <p>5 A I didn't really see any comments about her</p> <p>6 being verbal, but I assumed that she was verbal</p> <p>7 prior to the accident. There's one note -- the name</p> <p>8 is redacted -- that says speech delay, but from the</p> <p>9 context of other things I learned, I believe it was</p> <p>10 her sister Brooke and not [REDACTED]; although the name</p> <p>11 of the child was cut off on that notation.</p> <p>12 Q Right. But you'd agree with me that</p> <p>13 that's a record that actually is regarding Brooke?</p> <p>14 A Well, most all of them are regarding</p> <p>15 Brooke or the mother. [REDACTED] was described, I</p> <p>16 won't say tangentially, but through the other</p> <p>17 individuals as best I could tell.</p> <p>18 Q Other than the mother's, in your words,</p> <p>19 minimization of [REDACTED] behavior prior to the</p> <p>20 automobile collision, did you learn anything</p> <p>21 different from her than what you had reviewed in the</p> <p>22 records that was substantial or significant?</p>	<p style="text-align: right;">Page 52</p> <p>1 A Yes.</p> <p>2 Q Who was that?</p> <p>3 A You have my notes.</p> <p>4 Q Which number do you want?</p> <p>5 A Let me look at the handwriting. That</p> <p>6 would be number 40, Judy Harding, H-a-r-d-i-n-g.</p> <p>7 She has a master's in science, does counseling on</p> <p>8 her own, not through this office, and she's been</p> <p>9 taking background histories for me for probably in</p> <p>10 excess of 20 years.</p> <p>11 Q Is she an employee of your office,</p> <p>12 Ms. Harding?</p> <p>13 A Excuse me?</p> <p>14 Q Ms. Harding, is she an employee of your</p> <p>15 office?</p> <p>16 A No. She's a subcontractor.</p> <p>17 Q Why do you subcontract out someone else to</p> <p>18 take the background and history?</p> <p>19 A Someone besides me you mean?</p> <p>20 Q Yes.</p> <p>21 A I find it more efficient. My experience</p> <p>22 in doing forensic work at other settings, I found</p>
<p style="text-align: right;">Page 51</p> <p>1 A I think the mother, if I recall my</p> <p>2 notes -- you have them there --</p> <p>3 Q Please feel free to review them.</p> <p>4 A -- suggested that [REDACTED] stopped talking</p> <p>5 almost immediately after the accident. In my review</p> <p>6 of the records it's a little vague, but at least two</p> <p>7 weeks after the accident when she saw the</p> <p>8 pediatrician she was verbal, and I think it appears</p> <p>9 that sometime after that, around June, the beginning</p> <p>10 of the summer, she stopped talking.</p> <p>11 Q How long was your interview with the mom?</p> <p>12 I think it occurred on two different occasions. Is</p> <p>13 that right?</p> <p>14 A Yes. No. The first occasion she got up</p> <p>15 and walked out as we started talking. That was</p> <p>16 confined to an assistant of mine taking background</p> <p>17 history. The second occasion I would guesstimate</p> <p>18 was somewhere between an hour to an hour and a half,</p> <p>19 in that range.</p> <p>20 Q Tell me about the use of an assistant.</p> <p>21 Was there an assistant who took background</p> <p>22 information in that case?</p>	<p style="text-align: right;">Page 53</p> <p>1 that it was valuable to have someone go through a</p> <p>2 standard outline, do the history, and then doing my</p> <p>3 own interview zeroing in on certain things. The</p> <p>4 other is that Ms. Harding has the ability to type a</p> <p>5 conversation speech, so I get almost a transcript of</p> <p>6 what was said, which I find very helpful.</p> <p>7 Q When you say more efficient, does that</p> <p>8 mean cost efficient?</p> <p>9 A I guess that's part of it. Primarily it's</p> <p>10 that I just found it more complete to have someone</p> <p>11 do the background history, and then I spend the</p> <p>12 afternoon going into more specific things, and I</p> <p>13 don't have to spend a lot of time on things that may</p> <p>14 not be as germane to a particular case.</p> <p>15 Q Do you have the opportunity to review</p> <p>16 Ms. Harding's notes prior to your evaluation with</p> <p>17 the patient?</p> <p>18 A Yes.</p> <p>19 Q And did you in this case?</p> <p>20 A Yes.</p> <p>21 Q And do you have a copy of Ms. Harding's</p> <p>22 notes?</p>

14 (Pages 50 to 53)

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<p style="text-align: right;">Page 54</p> <p>1 A They're contained in section 40.</p> <p>2 Q Okay. Thank you.</p> <p>3 A Exhibit 6.</p> <p>4 Q Does Ms. Harding follow a standard</p> <p>5 outline, so to speak, for how she conducts the</p> <p>6 background information?</p> <p>7 A Yes.</p> <p>8 Q And is that something that she developed</p> <p>9 or you developed?</p> <p>10 A It's something I developed.</p> <p>11 Q And when she does that background</p> <p>12 information in the case of a child evaluation, does</p> <p>13 she get that from the child or the parent?</p> <p>14 A I'm sorry. Once again.</p> <p>15 Q When Ms. Harding is doing that interview,</p> <p>16 does she get the information from the child or the</p> <p>17 parent?</p> <p>18 A Typically from the parent.</p> <p>19 Q What's the need for doing this if you've</p> <p>20 already gotten, for example, in this case voluminous</p> <p>21 medicals and school records and depositions? What's</p> <p>22 the purpose of an additional background by someone</p>	<p style="text-align: right;">Page 56</p> <p>1 meets them versus what's contained in the medical</p> <p>2 records?</p> <p>3 A I don't think it's an attempt to highlight</p> <p>4 it. I think it's an attempt simply to resolve it if</p> <p>5 there is a discrepancy.</p> <p>6 Q Have you ever had an instance where there</p> <p>7 wasn't a discrepancy?</p> <p>8 A Excuse me?</p> <p>9 Q Have you ever had an instance in all of</p> <p>10 your years in doing this where there wasn't a</p> <p>11 discrepancy?</p> <p>12 A I don't understand your question.</p> <p>13 Q Have you ever had an instance in which</p> <p>14 Ms. Harding has done an interview, and there wasn't</p> <p>15 a discrepancy in what Ms. Harding learned versus</p> <p>16 what you learned in the medical records and school</p> <p>17 records?</p> <p>18 A Sure. It HAPPENS lots of times. It's</p> <p>19 also an issue of completeness. A lot of times the</p> <p>20 medical records have very brief notes about certain</p> <p>21 things. I like to get more expansive notes about</p> <p>22 different areas that may not be in the depth that</p>
<p style="text-align: right;">Page 55</p> <p>1 else?</p> <p>2 A I think it's important to do some of that</p> <p>3 information gathering myself rather than rely on</p> <p>4 other sources exclusively. We also ask in the</p> <p>5 standard background history questions that may not</p> <p>6 be contained in the medical records, but I think</p> <p>7 that's more applicable to adult evaluations than it</p> <p>8 is specifically to children.</p> <p>9 Q If there is a conflict, for example, in</p> <p>10 the information that was gained by Ms. Harding</p> <p>11 versus information that was gained by the medical</p> <p>12 records, do you attach more significance to one or</p> <p>13 the other?</p> <p>14 A I don't do either. What I try to do in my</p> <p>15 interview is resolve any discrepancies by looking at</p> <p>16 what the individual might have told Ms. Harding and</p> <p>17 what is in the medical record and ask the person, if</p> <p>18 there is something different, how to best reconcile</p> <p>19 that.</p> <p>20 Q Is that one of her purposes, to try and</p> <p>21 highlight discrepancies between what the parent is</p> <p>22 explaining in terms of the history at the time she</p>	<p style="text-align: right;">Page 57</p> <p>1 the medical records have.</p> <p>2 Q Was there any discrepancies in the</p> <p>3 information that was compiled by Ms. Harding versus</p> <p>4 the information that you learned in the other</p> <p>5 materials that had been provided to you?</p> <p>6 A I think to the extent there was an attempt</p> <p>7 at minimizing [REDACTED] problems predating the</p> <p>8 accident, I don't know if I'd call that a</p> <p>9 discrepancy or just a minimization of it, but there</p> <p>10 was certainly some discrepant issues with that.</p> <p>11 Beyond that I wouldn't call it discrepancies as much</p> <p>12 as I'd call it an attempt to get more detail than I</p> <p>13 found contained in the medical records in a number</p> <p>14 of areas.</p> <p>15 Q Did you think that Ms. Farber's</p> <p>16 minimization, as you called it, of [REDACTED] mental</p> <p>17 health status prior to the accident was purposeful?</p> <p>18 A I don't know. I guess I'd have to ask</p> <p>19 Ms. Farber that.</p> <p>20 Q You'd agree with me that a lot of times as</p> <p>21 time passes what we remember occurring and what</p> <p>22 actually occurred differs not because of any</p>

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<p style="text-align: right;">Page 58</p> <p>1 purposeful attempt to try and change history but</p> <p>2 because you just don't remember how it happened when</p> <p>3 it happened three years ago?</p> <p>4 A That is certainly a possibility. I've</p> <p>5 often found people do what's called false</p> <p>6 attribution and deliberate minimization. In all</p> <p>7 fairness to this case, I was not evaluating the</p> <p>8 mother, I was gaining information from her, so I did</p> <p>9 not attempt to do a psychiatric evaluation of her to</p> <p>10 determine her motives.</p> <p>11 Q So you're not going to testify whether you</p> <p>12 found what you're categorizing as her minimization</p> <p>13 to be purposeful or not?</p> <p>14 A I don't think I would be able to do that.</p> <p>15 I certainly could testify that I found definite</p> <p>16 minimization, but ascribing a specific purpose to</p> <p>17 it, as I say, it wasn't my charge to do an</p> <p>18 evaluation of the mother.</p> <p>19 Q How long was your actual evaluation of</p> <p>20 Lindsey in this case?</p> <p>21 A The evaluation was extremely long. The</p> <p>22 interview you mean?</p>	<p style="text-align: right;">Page 60</p> <p>1 A Custody or trauma cases.</p> <p>2 Q So you've never had a trauma case in which</p> <p>3 the child who is of tender years age as [REDACTED] was</p> <p>4 wanting to have their parent present during an</p> <p>5 interview?</p> <p>6 A Yeah, I think they've wanted to have them</p> <p>7 present. I've usually had the mother sit out in the</p> <p>8 waiting room. Sometimes a child gets a little</p> <p>9 upset, they go out and talk to the mother, they come</p> <p>10 back in, any variety of things. There may have been</p> <p>11 one or two occasions in the past where there was a</p> <p>12 court order requiring the mother to be present.</p> <p>13 Q And that was the case in this instance as</p> <p>14 well. Is that right?</p> <p>15 A Yes.</p> <p>16 Q Did [REDACTED] mom coach her during your</p> <p>17 interview with [REDACTED]?</p> <p>18 A I don't think so, no. I didn't observe</p> <p>19 her coaching her.</p> <p>20 Q She was simply there for emotional comfort</p> <p>21 if [REDACTED] needed it?</p> <p>22 A She was there because she was</p>
<p style="text-align: right;">Page 59</p> <p>1 Q Fair enough. The interview, yeah.</p> <p>2 A The interview was fairly brief, in the</p> <p>3 range of 20 to 30 minutes.</p> <p>4 Q Is that typical in terms of the past</p> <p>5 evaluations that you've done of children that the</p> <p>6 interview is in the 20 to 30 minute range?</p> <p>7 A Children of her age, yes, that's not at</p> <p>8 all unusual. I don't expect to find a lot of</p> <p>9 substantive information. I'm mostly looking to try</p> <p>10 to get a sense of how they're doing now. Trying to</p> <p>11 find historical information from a five or</p> <p>12 six-year-old is not very productive. I also found</p> <p>13 that I thought [REDACTED] was, I don't know how</p> <p>14 forthcoming she would have been if her mother wasn't</p> <p>15 present, but her mother was sitting in the room as</p> <p>16 an observer, and that was a factor that is not</p> <p>17 something I have commonly had because most of the</p> <p>18 cases I've had the opportunity to see the child</p> <p>19 without the mother present.</p> <p>20 Q Is that because most of the cases you're</p> <p>21 doing is custody cases, so you're trying to evaluate</p> <p>22 the child?</p>	<p style="text-align: right;">Page 61</p> <p>1 court-ordered to be there. I can't tell you why.</p> <p>2 Q But [REDACTED] wanted her there, right?</p> <p>3 A I don't know if [REDACTED] wanted her there.</p> <p>4 I didn't attempt to interview her without her there.</p> <p>5 Q You did attempt to interview her in the</p> <p>6 summer of 2012 without her mom, and she said she</p> <p>7 wasn't going to do it. Is that right?</p> <p>8 A First of all, I did not attempt to</p> <p>9 interview her in the summer. I interviewed the</p> <p>10 mother, and she said she was not going to permit</p> <p>11 [REDACTED] to be interviewed without her being present.</p> <p>12 That was what the mother said. I have no idea what</p> <p>13 [REDACTED] said because I never got to talk to her.</p> <p>14 Q So you didn't talk to [REDACTED] at all in</p> <p>15 the summer of 2012?</p> <p>16 A I don't recall, except saying hello or</p> <p>17 something, speaking to [REDACTED] in August of 2012,</p> <p>18 no.</p> <p>19 Q Okay.</p> <p>20 A It's outlined in the chronology, but it's</p> <p>21 my recollection it was the mother's insistence. We</p> <p>22 never got as far as whether [REDACTED] wanted her</p>

16 (Pages 58 to 61)

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1 mother present or not. I note on this that
 2 Mrs. Farber insisted on being present when
 3 Dr. Richmond saw [REDACTED] but I did not see [REDACTED]
 4 that day in any attempt of an interview.

5 **Q Would you agree with me that a car
 6 accident can be a traumatic experience?**

7 **A Excuse me?**

8 **Q A car accident can be a traumatic
 9 experience?**

10 **A Yes.**

11 **Q And whether it's a traumatic experience or
 12 not is multifactorial. It depends, for example,
 13 on --**

14 **A Can you speak up a little bit?**

15 **Q Yeah. Can you hear me better?**

16 **A Yes, that's better.**

17 **Q Whether a car accident is traumatic is
 18 multifactorial. Is that right?**

19 **A I'm not sure I understand your question.**

20 **Q Sure. It depends, for example, on the
 21 impact of the automobile collision?**

22 **A That would be one factor.**

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1 **Q And it may depend on whether a person was
 2 physically injured?**

3 **A Whether?**

4 **Q Whether a person was physically injured?**

5 **A Yes.**

6 **Q And it could depend on whether there were
 7 other people that were physically injured or killed
 8 in the automobile collision?**

9 **A Sure.**

10 **Q And it could depend on the person's
 11 emotional state at the time of the collision,
 12 meaning not because of the collision but up to and
 13 during the time of the collision?**

14 **A That could be a factor.**

15 **Q And in your clinical practice have you
 16 treated patients who have mental health needs
 17 because of a traumatic experience following an
 18 automobile collision?**

19 **A Yes.**

20 **Q Have you treated a person that has had an
 21 exacerbation of anxiety symptoms, meaning they had a
 22 preexisting condition of anxiety, and an automobile**

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1 **collision exacerbated those symptoms?**

2 **A I don't know if the automobile accident
 3 specifically exacerbated the symptoms, but I have
 4 certainly treated people who got worse after an
 5 automobile accident. Again temporally there was an
 6 association. I've also treated people with
 7 posttraumatic stress disorder following automobile
 8 accidents. So yes, it certainly does happen.**

9 **Q You seem hesitant to suggest or to agree
 10 that an automobile collision can cause an increase
 11 in anxiety?**

12 **A Can cause an increase in anxiety? It's
 13 possible.**

14 **Q And as you said, you've treated patients
 15 with posttraumatic stress disorder following an
 16 automobile collision?**

17 **A Yes.**

18 **Q But none of those have been children in
 19 your clinical practice?**

20 **A That's correct.**

21 **Q Have you done any literature search
 22 regarding children's responses to traumatic**

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1 **automobile collisions?**

2 **A It's contained in some of the literature I
 3 looked at on selective mutism, yes.**

4 **Q Did you do an independent literature
 5 search regarding children's responses to traumatic
 6 automobile collisions?**

7 **A Independent of selective mutism you mean?**

8 **Q Yeah.**

9 **A Well, some of that I notice was contained
 10 in at least one or two articles of Dr. Zimnitzky's,
 11 but I don't recall specifically doing a literature
 12 search on that topic.**

13 **Q In your understanding what are the causes
 14 generally of selective mutism?**

15 **A My understanding is that there is no
 16 agreed upon etiology of selective mutism. All the
 17 articles I've read said there really is no
 18 established cause or etiology.**

19 **Q And the articles that you're referencing
 20 are the ones that you have pulled in your tab 16,
 21 which is Exhibit 3, and the ones that were
 22 referenced by Dr. Zimnitzky. Is that right?**

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 A Yes.</p> <p>2 Q Are you aware that the literature</p> <p>3 regarding the etiology of selective mutism suggests</p> <p>4 that the cause may be multifactorial?</p> <p>5 A The cause has been considered to be</p> <p>6 multifactorial, although trauma has been ruled out</p> <p>7 as a cause in most of the literature I reviewed.</p> <p>8 Q In most of the literature or in all of the</p> <p>9 literature?</p> <p>10 A Excuse me?</p> <p>11 Q In most of the literature or in all of the</p> <p>12 literature?</p> <p>13 A I don't know that I've reviewed all the</p> <p>14 literature that's out there. All the literature</p> <p>15 I've reviewed and those that reference other</p> <p>16 literature studies have essentially ruled out trauma</p> <p>17 as a cause of selective mutism.</p> <p>18 Q Isn't it more accurate to say that they</p> <p>19 have categorized it as an uncommon cause but not</p> <p>20 that it's not a cause?</p> <p>21 A No. Most of them have actually, as best I</p> <p>22 can rule, simply said that there is no established</p>	<p style="text-align: right;">Page 68</p> <p>1 mention is genetic. Other than that, there's no</p> <p>2 etiology that has been identified as a cause of</p> <p>3 selective mutism.</p> <p>4 Q I want to make sure I'm clear. The</p> <p>5 research that you've done that you're relying on is</p> <p>6 what's contained in tab 16?</p> <p>7 A As well as confirmed by the literature</p> <p>8 cited by Dr. Zimnitzky.</p> <p>9 Q Is there a cause of autism?</p> <p>10 A Excuse me?</p> <p>11 Q Is there an accepted cause of autism?</p> <p>12 A I'm not aware of any specific cause, no.</p> <p>13 Q Is there cause of anxiety?</p> <p>14 A There's a physiologic cause if you're</p> <p>15 talking about physiologic mechanisms. I don't think</p> <p>16 there's any absent PTSD, which is identified as a</p> <p>17 specific event in time that has certain well-defined</p> <p>18 parameters. There are associations. People tend to</p> <p>19 get anxious after certain traumatic events or life</p> <p>20 experiences, but as far as what actually causes</p> <p>21 anxiety, no, I don't think there's any agreed upon</p> <p>22 etiology to that either.</p>
<p style="text-align: right;">Page 67</p> <p>1 etiology. If there's no established etiology, then</p> <p>2 trauma is not a cause.</p> <p>3 Q If there's no established etiology, then</p> <p>4 there in fact is nothing that's considered a cause</p> <p>5 of selective mutism. It just, poof, happens, right?</p> <p>6 A It doesn't mean it, poof, happens. It</p> <p>7 just means that the scientific evidence we have to</p> <p>8 date has not established a cause by any consensus or</p> <p>9 peer-reviewed literature. I'm sure there may</p> <p>10 possibly be a cause found one day, but it's not the</p> <p>11 state of the current psychiatric or child psychiatry</p> <p>12 literature or anything that I've seen on selective</p> <p>13 mutism.</p> <p>14 Q Isn't it more accurate to say that they</p> <p>15 haven't established one cause of selective mutism,</p> <p>16 but they in fact have established a bevy of</p> <p>17 alternatives that may be a cause, all of which</p> <p>18 they're still investigating as to how they play a</p> <p>19 part in the diagnosis of selective mutism?</p> <p>20 MR. MCCARRON: Objection to form.</p> <p>21 A The best I've been able to glean from the</p> <p>22 literature is that the only cause they seem to</p>	<p style="text-align: right;">Page 69</p> <p>1 Q Then you'd agree with me that a person can</p> <p>2 suffer from anxiety without having the diagnosis of</p> <p>3 PTSD?</p> <p>4 A Yes.</p> <p>5 Q And in fact, if a person is suffering from</p> <p>6 anxiety, and they don't meet the qualifications of</p> <p>7 PTSD, they actually under the DSM go under</p> <p>8 generalized anxiety?</p> <p>9 A They can fall under a variety of different</p> <p>10 diagnoses. That's one of them of.</p> <p>11 Q In your review of the literature did you</p> <p>12 find any peer-reviewed articles that discussed</p> <p>13 children that developed selective mutism following a</p> <p>14 traumatic event in their life?</p> <p>15 A I believe there was one cited by</p> <p>16 Dr. Zimnitzky which had to do with a single case</p> <p>17 report following a dog bite trauma that he</p> <p>18 referenced. The article he cited that reviewed</p> <p>19 selective mutism after automobile accidents, the</p> <p>20 entire population are all children who were</p> <p>21 hospitalized. I think that's a different cohort</p> <p>22 than Lindsey's case because some of them were in</p>

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<p style="text-align: right;">Page 70</p> <p>1 hypovolemic shock, and they were seriously 2 physically injured and had gone through the 3 experience of a hospitalization which you don't have 4 in this case. So I don't think that article really 5 can be applicable to this case. 6 Q In your research have you come across any 7 case reports of people that had selective mutism 8 following sexual abuse? 9 A That's been thought to be a cause, but a 10 number of these articles seem to discount that and 11 don't use that as a cause, but some of them use it 12 as an association. 13 Q In your review of the literature did you 14 find any reports of children that developed 15 selective mutism following physical abuse? 16 A Again they may have following physical 17 abuse, but there's no articles I saw that indicated 18 that there's a cause of it or an established 19 etiology to say that physical abuse is a cause of it 20 or sexual abuse is a cause of it or whatever because 21 the prevailing opinion is we do not know the 22 etiology if there is one.</p>	<p style="text-align: right;">Page 72</p> <p>1 they tend to be better spellers. So there's no 2 causation between foot size and spelling. It's an 3 association. 4 Q For an injury to be caused by an 5 automobile collision, doesn't it need to be 6 exclusively caused by the automobile collision? 7 MR. MCCARRON: Object to form. 8 A For an injury to be caused by an 9 automobile accident. Do you mean a physical injury 10 or an emotional injury? I'm not sure I understand 11 your question. 12 Q Either. For a person to have an injury 13 after an automobile collision, does the injury need 14 to be exclusively caused by the automobile collision 15 for it to be a cause of the automobile collision? 16 A I guess it depends. Are you asking as a 17 forensic matter, or are you asking as a general 18 clinical matter? As a forensic matter, if you're 19 establishing cause there are certain legal terms 20 that apply to it. If you're talking clinically that 21 someone says I was in an accident, now I feel worse, 22 I'd like some treatment, you don't necessarily go</p>
<p style="text-align: right;">Page 71</p> <p>1 Q Don't those articles actually suggest that 2 the traumatic events of, for example, sexual abuse 3 or physical abuse are a multifactorial piece of the 4 cause of selective mutism, that they in and of 5 themselves may not be the sole cause of the 6 selective mutism? 7 A First of all, those articles use the term 8 associated, meaning that they take a cohort of 9 people with selective mutism and look in the 10 background of what common factors they have, but an 11 association is not causation. 12 Q What is an association to you? 13 A Excuse me? 14 Q What does association mean to you? 15 A Association is merely meaning that 16 something was identified before an event, but it 17 doesn't necessarily mean it is the cause of the 18 event. For example, children with larger shoe sizes 19 tend to be much better spellers. That doesn't mean 20 the size of your foot means that you're a better 21 speller. What it means is that children with larger 22 shoe sizes tend to be older, and as they get older</p>	<p style="text-align: right;">Page 73</p> <p>1 back and do, as I indicated earlier, a detailed 2 analysis of whether the accident was the specific 3 cause. If they say it is for clinical purposes, you 4 tend to take it at face value and treat them for the 5 symptoms. If you're looking for specific forensic 6 opinions in a legal setting, I think you have to go 7 beyond that and look at whether it is a cause, some 8 cause, no cause, if there's the ability to identify 9 a cause. I don't know how to better answer that 10 question. 11 Q In your forensic work, for an injury to be 12 a cause of the automobile collision, what does that 13 mean? 14 MR. MCCARRON: I'll object. 15 A I don't know that it means anything 16 because I'm not sure what you're defining by injury, 17 whether you're talking about physical, emotional, 18 how serious. For example, if someone is in a car 19 accident and suffers a broken arm, I think it's fair 20 to say that if their arm hit the side of the car as 21 the car was in a collision, then yes, the auto 22 accident and striking their arm was the cause of the</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 physical injury. I think that would be a fairly 2 clear example of that.</p> <p>3 Q And using that example, what if the person 4 had a fractured arm at the time that they were in 5 the automobile collision?</p> <p>6 A Well, you'd have to know did they fracture 7 it right before the accident because they had a slip 8 and fall, or was their arm perfectly normal at the 9 time of the accident, and they suffered an injury to 10 the arm that wasn't present before?</p> <p>11 Q You'd agree with me under that scenario of 12 course, which is not present here, that the 13 automobile collision could have caused the broken 14 arm, or it could have exacerbated a preexisting 15 condition that already existed in the arm prior to 16 the automobile collision?</p> <p>17 A If you have the history that they struck 18 their arm against the side of the car, and they have 19 bruising and physical pain and an x-ray that shows a 20 fracture right where they say they struck their arm, 21 I would say that's fairly good evidence that the 22 auto accident caused the broken arm.</p>	<p style="text-align: right;">Page 76</p> <p>1 1:00 o'clock. I gather we're going to be here 2 awhile.</p> <p>3 Q Yes, we are.</p> <p>4 A Maybe we could take a little break. I 5 don't know if anybody wants to do lunch or just take 6 a five-minute break or whatever. I certainly want 7 to take a little break.</p> <p>8 Q I'm happy to accommodate you, whatever you 9 prefer.</p> <p>10 A I'll go with the little break now. 11 (Recess 1:02 P.M. to 1:27 P.M.) 12 BY MS. PORWICK:</p> <p>13 Q Are you ready, Doctor?</p> <p>14 A Yes.</p> <p>15 Q All right. How many case reports of a 16 person developing selective mutism following a 17 traumatic event would you need to see in a 18 peer-reviewed context to consider it a potential 19 cause of selective mutism?</p> <p>20 A I would need research which says there is 21 an etiologic connection. That's not the state of 22 the literature right now, nor the state of the</p>
<p style="text-align: right;">Page 75</p> <p>1 Q Let's talk about it in the context of an 2 emotional injury where you don't have bruising 3 that's noticeable, and you don't have the ability to 4 take an x-ray. Would you agree with me that an 5 automobile collision can cause an exacerbation of an 6 emotional condition?</p> <p>7 A It really depends on the condition, and it 8 depends on the nature of the accident. Are you 9 asking a clinical cause, or are you asking for legal 10 testifying purposes? Because for that I think we've 11 talked about that there's no literature that 12 establishes an etiology. For purposes of clinical 13 treatment you can use that as a potential cause, but 14 if you're trying to establish some legal testimony 15 that meets a standard of peer-reviewed literature, 16 general acceptance, et cetera, then you have to go 17 much beyond that, and it really depends on what 18 condition you're talking about. If you're talking 19 about PTSD, yes, there's established literature that 20 says that traumatic events can cause PTSD. There's 21 not such a thing with generalized anxiety or with 22 selective mutism to the best of my knowledge. It's</p>	<p style="text-align: right;">Page 77</p> <p>1 community knowledge about the topic.</p> <p>2 Q I understand that you would need research. 3 How much is my question. What do you need? What 4 would be sufficient for you?</p> <p>5 A I don't know. I'd at least like to see 6 one article. That's not sufficient. The general 7 standard is there has to be a community acceptance, 8 and there has to be peer-reviewed literature. I 9 don't know that there's a defined number of 10 peer-reviewed literature studies, but there 11 generally has to be acceptance that they found a 12 cause of a particular condition.</p> <p>13 Q Do you happen to have a copy of your 14 report available?</p> <p>15 A Yes.</p> <p>16 Q All right. I'm looking at page 2. The 17 first and second paragraphs are in quotations. Was 18 this information that was collected by Ms. Harding?</p> <p>19 A No. This was from my interview asking the 20 mother what she thought was still going on.</p> <p>21 Q And the pre-accident history, this is 22 again information that you gathered from the mother</p>

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1 during your interviews of her?

2 A Yes.

3 Q The information that's contained in the
4 accident, this is information again that you got
5 from the mother or the mother and records?

6 A Everything I've noted in the report on
7 pages 1 through the top of 6, the first paragraph,
8 came from the mother. The lower part of 6 is a
9 summary of my interview with [REDACTED] LF

10 Q Let's go there. Tell me about your
11 interview with [REDACTED] LF

12 A It's on page 6.

13 Q Was she communicative with you?

14 A Excuse me?

15 Q Was she communicative with you? Did she
16 talk with you?

17 A Do you want me to read from the report?

18 Q No.

19 A That's the best I'm going to be able to do
20 is read it from the report.

21 Q Based on your recollection did she talk
22 with you?

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1 A She talked with me some. She was
2 reluctant to speak at first. As the interview
3 progressed she became more engaging and talkative.
4 She was somewhat selective in the things that she
5 chose to talk about. She spoke about the accident
6 but not about any selective factors in her mutism.
7 When speaking responses were coherent, relevant and
8 goal-directed. Her vocabulary was consistent with
9 her education and background.

10 Q Do you have an independent recollection of
11 the interview with [REDACTED] LF

12 A Yeah, I have a vague recollection. I
13 won't say vague. I have a recollection of it, yes.

14 Q What questions did you ask her about the
15 accident?

16 A I don't recall specifically. I probably
17 asked her what she remembered about it if anything.
18 Beyond that I can only comment on what's in the
19 report. You have my notes.

20 Q Sure.

21 A I think you were provided with a copy of
22 the interview notes, right?

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1 Q I was not, no.

2 A If you make a copy of it, the top of page
3 8 is a summary or actually close to a transcript of
4 what the conversation with Lindsey was about from
5 page 8 through, looks like 10.

6 Q Was there someone in the room that was
7 transcribing the conversation that you had with
8 [REDACTED] LF

9 A Excuse me?

10 Q Was there someone in the room that was
11 transcribing the conversation that you were having
12 with [REDACTED] LF

13 A Yes. No. I'm sorry. The interview
14 lasted from 3:45 to 4:20. As I recall, the mother
15 was present, but I don't think it was transcribed as
16 best I'm remembering. It's in my notes, the last
17 one, two, three pages of notes.

18 Q And on there does it indicate what
19 questions you asked her about the automobile
20 collision?

21 A She said black glass shattered on CeeCee.
22 She got frightened. CeeCee to the hospital. That's

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1 basically what she said about the accident.

2 Q Did she tell you that it made her scared?

3 A Excuse me?

4 Q Did she tell you that she was scared after
5 the automobile collision, that she cried?

6 A She said she got frightened.

7 Q Did she tell you that she talked about the
8 automobile collision incessantly for the first few
9 days after the collision? LF

10 A Did [REDACTED] tell me that? No.

11 Q Did you ask her any questions about it?

12 A I asked her a lot of questions about it,
13 but she wasn't very communicative about it.

14 Q Did you assign any significance to the
15 fact that she was not communicative about the
16 automobile collision?

17 A I attached a lot of significance to a lot
18 of things, mostly that had she had the accident and
19 gone into a little bit of emotional distress, and
20 there had not been a lawsuit filed, she probably
21 would have gotten over it by the summer of 2008,
22 maybe the fall. Since there's been a total

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 preoccupation by the mother, the child, she's been</p> <p>2 to all these different therapists, she's been to</p> <p>3 evaluations, she's constantly having to relive the</p> <p>4 story, it's like pulling a scab off and not letting</p> <p>5 the underlying skin heal. So yeah, I think that's a</p> <p>6 big factor in why she's still talking about it.</p> <p>7 Q Can you state that to a reasonable degree</p> <p>8 of medical certainty?</p> <p>9 A Sure.</p> <p>10 Q Did you ask her about any other topics for</p> <p>11 which she chose not to talk to you about?</p> <p>12 A Yeah. She spoke about the accident. I</p> <p>13 asked her a bunch of things about what circumstances</p> <p>14 she didn't talk and why and what that was about, and</p> <p>15 she didn't want to stay very much as noted in the</p> <p>16 report. She spoke about the accident but not about</p> <p>17 any selective factors in her mutism, which I don't</p> <p>18 want to say is contrived, but as I say, I think it's</p> <p>19 a focus of things because when you count up the</p> <p>20 number of evaluations she's had between depositions</p> <p>21 and evaluations and focusing on this accident, it</p> <p>22 keeps bringing it up to mind. We talked a little</p>	<p style="text-align: right;">Page 84</p> <p>1 she not expanding on?</p> <p>2 A Everything.</p> <p>3 Q What questions did she not talk about?</p> <p>4 A Everything. How is school? It's okay.</p> <p>5 She's not expansive, but you don't expect that from</p> <p>6 a ten-year-old.</p> <p>7 Q Would you have expected her to have</p> <p>8 recalled more details about the accident than she</p> <p>9 did?</p> <p>10 A I would have expected her to recall fewer</p> <p>11 details about the accident had there not been this</p> <p>12 ongoing litigation process which constantly causes</p> <p>13 her to be reminded of it and asked about it.</p> <p>14 Q So the fact that she developed selective</p> <p>15 mutism and had emotional problems following the</p> <p>16 automobile collision is because she filed a lawsuit</p> <p>17 about it?</p> <p>18 A No, I didn't say that. There's no</p> <p>19 established etiology for selective mutism. While</p> <p>20 you can't ascribe trauma to it, I don't think</p> <p>21 there's any known etiology for it to ascribe any</p> <p>22 other cause to it as well.</p>
<p style="text-align: right;">Page 83</p> <p>1 about her school, her pet dog, about Brooke.</p> <p>2 Q Did she answer those questions that you</p> <p>3 had about those topics, Brooke and her pet dog and</p> <p>4 school?</p> <p>5 A Somewhat.</p> <p>6 Q So the areas in which she was not</p> <p>7 answering your questions as fully as you would have</p> <p>8 liked dealt with her selective mutism and the</p> <p>9 automobile collision?</p> <p>10 A I don't know if it was selective mutism.</p> <p>11 She just didn't want to answer questions in much</p> <p>12 detail. Plus her mother was sitting there.</p> <p>13 Q I'm not asking whether it's selective</p> <p>14 mutism. I said the areas in which she did not</p> <p>15 expand, the areas in which she did not answer all of</p> <p>16 your questions, were those questions about selective</p> <p>17 mutism and questions about the automobile</p> <p>18 collision?</p> <p>19 A There's a lot of things she didn't expand</p> <p>20 on, but I don't expect a child of her age to be very</p> <p>21 expansive.</p> <p>22 Q That's my question. What other areas was</p>	<p style="text-align: right;">Page 85</p> <p>1 Q I understand that you have an opinion that</p> <p>2 selective mutism was not caused by the automobile</p> <p>3 collision. My question is different. Do you have</p> <p>4 an opinion about what in fact was the affirmative</p> <p>5 cause of selective mutism?</p> <p>6 A I think I said a few times there is no</p> <p>7 established etiology or cause for selective mutism.</p> <p>8 Given that, I am not in a position to opine about a</p> <p>9 cause because there's no known cause for it.</p> <p>10 Q Would you be able to say that the</p> <p>11 automobile collision was a contributing factor to</p> <p>12 her selective mutism?</p> <p>13 A I have not seen any literature,</p> <p>14 peer-reviewed or otherwise, or community acceptance,</p> <p>15 which suggests that a traumatic automobile accident</p> <p>16 is a contributing factor to selective mutism.</p> <p>17 Q Would you agree with me that there's</p> <p>18 literature out there that suggests that traumatic</p> <p>19 events in and of themselves, not specifically an</p> <p>20 automobile collision but a traumatic event, can be a</p> <p>21 contributing factor to the development of selective</p> <p>22 mutism?</p>

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1 A Once again there's been no established
2 etiology for selective mutism. If there's no
3 etiology, there's no established literature on what
4 is a contributing event to the extent that it is a
5 cause of something.

6 Q Would you agree with me that Lindsey
7 Farber met the diagnostic criteria for selective
8 mutism in the summer of 2008 after the automobile
9 collision?

10 A The latter part of the summer, early fall,
11 yes.

12 Q And in fact, she was diagnosed with
13 selective mutism in the summer of 2008 after the
14 automobile collision?

15 A Yes, she was. I don't dispute that.

16 Q And you'd agree with me that she had not
17 been diagnosed with selective mutism prior to the
18 automobile collision in May of 2008?

19 A As you asked that question before, the
20 answer is no.

21 Q No, she had not?

22 A She was not, correct.

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1 Q And in your interview with the mother and
2 review of the medical records and all the other
3 materials in this case, what other if any
4 significant events occurred in [REDACTED]'s life in the
5 spring and summer of 2008?

6 A There were ongoing events with family
7 discord, issues with her sister. As I referenced
8 earlier from the records, her throwing temper
9 tantrums and rather uncontrolled behavior was an
10 ongoing problem.

11 Q During that ongoing problem she still was
12 communicative and did not exhibit the signs of
13 selective mutism prior to the time of her diagnosis
14 in July of 2008. Is that right?

15 A As I've said, I found no indication that
16 she was diagnosed with selective mutism prior to the
17 summer of 2008.

18 Q My question now is a little different.
19 Not that she was diagnosed but that she exhibited
20 the signs and symptoms of selective mutism prior to
21 the summer of 2008. Did you find any evidence of
22 that?

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1 A I did not see evidence that she was
2 selectively mute even without the diagnosis prior to
3 the summer of 2008.

4 Q Do you think it's a coincidence that the
5 automobile collision occurred in May of 2008 and
6 [REDACTED] became selectively mute shortly
7 thereafter?

8 A I have no idea because there's no
9 established etiology for the cause of selective
10 mutism. Whether it was a coincidence or a nonevent,
11 I don't know, but there's no established etiology
12 for selective mutism.

13 Q Would you agree with me that [REDACTED] had,
14 if not an official diagnosis, had the signs and
15 symptoms of anxiety prior to the automobile
16 collision in 2008?

17 A Actually from my review of the records, it
18 appears that she had far more symptoms of anxiety,
19 temper tantrums and disruption prior to the accident
20 than she did after the accident.

21 Q When was the first time that there was
22 report to the Farber family of [REDACTED] showing signs

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1 and symptoms of selective mutism?

2 A When was the first time?

3 Q Yeah.

4 A As I said earlier, as far as I know, when
5 she saw her pediatrician on May 28th, I believe it
6 was, of 2008, she did not have any symptoms of it.
7 It was sometime after that, within the next few
8 weeks or so according to the medical records.
9 According to the mother it apparently happened right
10 after the accident, but that seems disputed by the
11 medical records.

12 Q Actually if you look at your report on
13 page 3, Mrs. Farber stated that [REDACTED] speaking
14 started to decline within two weeks after the
15 accident.

16 A She said within two weeks, but again I saw
17 a medical record two weeks after the accident which
18 didn't indicate any complaint of a decline by the
19 mother or any observation of a decline in speaking
20 by the doctor.

21 Q Did the mom explain to you that it was a
22 flip of a switch, that one day she was talking, and

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1 the next day she wasn't, or that it was a gradual
2 decline?

3 A No. I think she said it was gradual.

4 Q And the doctor's appointment that you're
5 referencing on May 28th, 2008, that was the
6 pediatrician that she had regularly seen throughout
7 her young life. Is that right?

8 A Yes.

9 Q Did you subscribe any significance to the
10 preschool teacher's report that at some point after
11 the automobile collision, [REDACTED] stopped actively
12 participating in preschool?

13 A Sure. In my report I indicated that in my
14 opinion she had selective mutism, which developed
15 sometime after the accident, and she got over it a
16 couple years later, and she's better from it.

17 Q In the content category on page 6 of your
18 report, the content was generally response and
19 age-appropriate. What does that mean, generally
20 response?

21 A I'm sorry. That's a misprint. It should
22 say the content was generally responsive, which

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1 means if I asked a particular question, if she
2 answered, it was responsive to the content of the
3 question.

4 Q So, for example, if you asked her what
5 color her shirt was, she gave you a color as an
6 answer? She was responsive? She was giving you
7 information that was responsive to your question?

8 A Correct. I'm sorry. That was a misprint.

9 Q Okay. At times she was guarded and vague.
10 How was she guarded and vague?

11 A She didn't talk very much about stuff.

12 Q And the stuff she didn't talk very much
13 about was the automobile collision and her not
14 speaking in certain public scenarios. Is that
15 right?

16 MR. MCCARRON: Objection.

17 A Again she was generally defensive and
18 resistive about a lot of things, but I didn't think
19 exceptionally so. You don't expect children at age
20 ten to be terribly expansive, but she seemed a
21 little more reticent to speak than my experience
22 with a lot of other children that I've evaluated.

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1 Q In what areas was she reticent to speak
2 other than the automobile collision and her
3 selective mutism?

4 A Actually she spoke about the automobile
5 collision in more detail than she spoke about
6 anything else.

7 Q Okay. What areas was she reticent to
8 speak in?

9 A Everything else.

10 Q What other areas did you inquire about?

11 A How are things at home? How are things
12 with your mother? How are things with your sister?
13 How are things in school? She wasn't very detailed
14 at all about are there any other stressors going on,
15 anything upsetting you in your life. She would
16 either shrug or give very vague and guarded
17 answers.

18 Q In your experience for a child of
19 [REDACTED] age, are they typically able to give you
20 meaningful responses to those questions?

21 A As I said, I thought she was somewhat
22 defensive and resistant but not excessively so, so I

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1 wouldn't put it outside the bell curve, but it was
2 certainly on the side toward being less responsive
3 and expressive than most, but I don't think it was
4 outside the curve of being exceedingly unusual.

5 Q Was your evaluation of [REDACTED] consistent
6 with the report and findings of Dr. Richmond?

7 A Excuse me?

8 Q Was your evaluation of [REDACTED] consistent
9 with the findings and report of Dr. Richmond?

10 A Yes. I didn't think there was anything
11 particularly notable about her in terms of
12 pathology. The other thing I'd add is when you
13 speak to a ten-year-old, I'm a stranger speaking to
14 her for the first time. You don't expect them to be
15 responsive. The ideal situation would be if you
16 could see them a couple of times and establish some
17 rapport and maybe have them be a bit more
18 communicative, but it's the nature of the type of
19 evaluation you do, and you have to accept it in that
20 context, and that's what I do.

21 Q In the depositions of some of [REDACTED]
22 healthcare providers, they attributed the automobile

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 94</p> <p>1 collision to be a cause or contributing factor to</p> <p>2 her selective mutism. Did you see that?</p> <p>3 A Some of them did. Some of them didn't</p> <p>4 know. I thought for the most part the prevailing</p> <p>5 opinion was they had no opinion about cause.</p> <p>6 Q Okay. You read Dr. DiFazio's deposition</p> <p>7 where he said that it was a cause or contributing</p> <p>8 factor?</p> <p>9 A I didn't see that they were quizzed about</p> <p>10 the nature of the literature. You say oh, the</p> <p>11 accident happened, and a couple weeks later she</p> <p>12 stopped talking. Gee, it must have been a cause.</p> <p>13 When you look at the specifics of it, the review of</p> <p>14 the literature, studies of it and so on, there's no</p> <p>15 established etiology, and trauma has been</p> <p>16 essentially ruled out as a cause of selective</p> <p>17 mutism.</p> <p>18 Q And you read Ruth Simon's deposition where</p> <p>19 she testified that she thought it was a cause or</p> <p>20 contributing factor?</p> <p>21 A I don't recall specifically, but I do</p> <p>22 recall most of the people's depositions I read, when</p>	<p style="text-align: right;">Page 96</p> <p>1 but when you're testifying to a certain legal or</p> <p>2 medical standard in court, you have to have</p> <p>3 something more than just your clinical judgment</p> <p>4 that's not community standard or peer-reviewed.</p> <p>5 Q My question is different. As a</p> <p>6 psychiatrist or a doctor, do you have any obligation</p> <p>7 to provide a case report on every patient that you</p> <p>8 have regarding what you suspect to be the cause or</p> <p>9 contributing factor of any illness or disease that</p> <p>10 they may have?</p> <p>11 A I don't think you have any obligation. If</p> <p>12 you were going to report it accurately, you would</p> <p>13 say I saw a patient who had the following problems</p> <p>14 following an accident. Unless you are able to do</p> <p>15 some standardized testing or research, I don't think</p> <p>16 it's appropriate to say it was caused by it just</p> <p>17 because it happened after.</p> <p>18 Q Did you see any case report out there on</p> <p>19 [REDACTED] LF</p> <p>20 A Any case report about her?</p> <p>21 Q Yes.</p> <p>22 A I wouldn't know because they're anonymous.</p>
<p style="text-align: right;">Page 95</p> <p>1 they were pinned down, really weren't able to say</p> <p>2 that it was a cause.</p> <p>3 Q And you read Dr. Kurtz's deposition where</p> <p>4 she said it was a cause or contributing factor. Is</p> <p>5 that right?</p> <p>6 A It's possible. Again they didn't seem to</p> <p>7 be quoting the peer-reviewed literature and the</p> <p>8 established community accepted opinion about it.</p> <p>9 They just seemed to be saying yeah, it seemed like a</p> <p>10 cause because it happened afterward.</p> <p>11 Q What's the obligation of a doctor to</p> <p>12 report cases when they see a patient in a clinical</p> <p>13 setting to provide a case report on their patient</p> <p>14 and the cause of any illness or disease in the</p> <p>15 patient?</p> <p>16 A What's that?</p> <p>17 Q Do they have any obligation?</p> <p>18 A I don't know what you mean. I don't think</p> <p>19 there's any specific obligation, but post hoc does</p> <p>20 not equal proper hoc. Just because it happened</p> <p>21 after doesn't mean it was caused by. It's easy in</p> <p>22 the clinical setting to say yeah, it was caused by,</p>	<p style="text-align: right;">Page 97</p> <p>1 I'm not aware of any.</p> <p>2 Q But certainly as someone who has now</p> <p>3 reviewed all of her medical records, you would be</p> <p>4 able to identify if there was a case report about</p> <p>5 [REDACTED] LF in light of the fact that you would</p> <p>6 know the date of the accident, you would know her</p> <p>7 treatment before, you would know her treatment</p> <p>8 after. Even if she wasn't identified by name, you</p> <p>9 would be able to say wow, there's way too many</p> <p>10 similarities between this case report and my</p> <p>11 patient. It has to be the same person.</p> <p>12 A I didn't see anything that met those</p> <p>13 parameters.</p> <p>14 Q So you would agree with me there could be</p> <p>15 lots of patients out there like [REDACTED] LF with</p> <p>16 selective mutism following a traumatic event where</p> <p>17 it just went unreported?</p> <p>18 A First of all, the incidence of selective</p> <p>19 mutism is extremely rare. It's not a common</p> <p>20 condition. All I can tell you is that all the</p> <p>21 literature I've researched and anything I know</p> <p>22 that's out there has not established an etiology or</p>

25 (Pages 94 to 97)

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1 cause for it. Whether there are anecdotal case
2 reports that do not meet the standard of research
3 and the standard acceptance of it, there might be,
4 but that's not research. That's reporting anecdotal
5 stories. That doesn't constitute cause.

6 **Q But you'd agree with me that even though**
7 **selective mutism is a rare condition, that it still**
8 **impacts thousands of children?**

9 A Thousands worldwide? Probably in the
10 thousands, yes. I think I read once where the
11 incidence was something like 1 in 40,000. If you
12 add up the population of children, it would be in
13 the thousands.

14 **Q And if my count is correct, you've read 11**
15 **articles plus the five or six that were submitted by**
16 **Dr. Zimnitzky regarding selective mutism. Is that**
17 **right?**

18 A Six, yes.

19 **Q Okay. So assuming my math is correct, and**
20 **I've accurately counted 11, that would be 17**
21 **articles regarding selective mutism. Is that right?**

22 A Not exactly. Each of those articles has a

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1 lengthy bibliography where they summarize the
2 findings of other articles. While I may not have
3 read each and every one of them, one article
4 summarizes lots of others, so you'd really look at
5 the bibliography for each one to add up the number
6 of articles.

7 **Q Let's assume that adding all of that up is**
8 **500.**

9 A Okay.

10 **Q That still doesn't account for all of the**
11 **children that suffer from selective mutism in the**
12 **United States or the world. Is that right?**

13 A It may account for all the ones that have
14 been studied as to a cause, but it may not account
15 for a population out there that we have no idea
16 about, no.

17 **Q So there could be lots of instances of**
18 **selective mutism where the cause was a traumatic**
19 **event. You just didn't read about it in your**
20 **research. Is that right?**

21 A To the extent that they've done research,
22 they have ruled out traumatic events as a cause.

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1 They've done specific studies, and they have not
2 found it is a cause. If you're asking me about a
3 group of people they haven't studied, I have no idea
4 what that would be. Total speculation.

5 **Q Did you read the deposition of**
6 **Dr. Shipon-Blum?**

7 A Yes.

8 **Q And did you read where she testified that**
9 **she has in fact treated thousands of children with**
10 **selective mutism, and although it represents a**
11 **minority, she has treated children that have**
12 **developed selective mutism as a result of a**
13 **traumatic event?**

14 A Again I'd have to go back and look at her
15 deposition page by page. If there's a page you want
16 to show me out of the deposition, I'd be happy to
17 look at it.

18 **Q I don't have her deposition with me. I'm**
19 **asking if you recall that testimony.**

20 A I don't recall specifically. I'd have to
21 go through the deposition to review it to see if
22 that's there in that specific way you describe it.

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1 **Q Are you critical of the treatment that**
2 **[REDACTED] received following the automobile**
3 **collision?**

4 A Am I critical of it?

5 **Q Yes.**

6 A I'm not sure I'd say I'm critical of it.
7 What I found was there did not seem to be much in
8 the way of discussion about the accident and what
9 fears she might have had as an ongoing issue to
10 attempt to reduce those fears and anxieties. It
11 just seemed to be put aside, and they dealt with
12 talking as opposed to what fears she might have had
13 that predated her selective mutism.

14 **Q Are you critical of the parents' decision**
15 **to partake in several different providers after the**
16 **automobile collision?**

17 A I don't know. That would depend on their
18 motive. If they were doing it out of genuine
19 concern for their daughter, no, I would not be
20 critical. If they were doing it out of the
21 furtherance of a lawsuit, then I think that would be
22 probably disruptive to the child.

26 (Pages 98 to 101)

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1 Q Do you plan to offer an opinion one way or
2 the other based on your two hypotheticals at trial?
3 A I don't believe so. I think I indicated
4 earlier I was not asked to evaluate the parents.
5 Q No, but you do indicate an opinion number
6 4, that she was not in need of any mental healthcare
7 or treatment nor any pharmacologic intervention as a
8 result of the subject accident of 5-15-08 either at
9 the time of the accident, from the time of the
10 accident to the present time, or at the time of my
11 evaluation of her on page 8.
12 A Yes.
13 Q And my question is according to this
14 opinion, although you do not have the opinion that
15 she was in need of mental healthcare or treatment as
16 a result of the accident, my question is are you
17 going to be critical of the mental healthcare or
18 treatment that she received following the automobile
19 collision even though you don't think it's related?
20 A I don't think I would offer any opinions
21 that it's critical. It focused on selective mutism.
22 Since it was not caused by the accident, then it was

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1 a condition. She had lots of problems before as
2 well. Even Dr. Zimnitzky indicated she would have
3 been in need of pharmacologic medication following
4 the accident had it never occurred. I don't have a
5 specific criticism, but because we don't have an
6 established cause to the accident, you can't say
7 that it was necessitated by the accident. *LP*
8 Q Other than the visit that [REDACTED] had with
9 her pediatrician on the day of the automobile
10 collision, did she require any medical care or
11 mental healthcare or treatment as a result of the
12 automobile collision?
13 A In my opinion she did not. She had all of
14 the problems of anxiety predating the accident. As
15 I indicated, she seemed to get better from the
16 anxiety and the temper tantrums and the disruption
17 after the accident, and she was treated for
18 selective mutism, a condition for which we do not
19 know a cause, but generally trauma has been ruled
20 out. *LP*
21 Q Did you ask [REDACTED] about any fears she
22 may currently have regarding automobiles?

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1 A Excuse me? *LP*
2 Q Did you ask [REDACTED] about any fears she
3 may currently have regarding automobiles?
4 A Yes. She said that she's worried a truck
5 will hit the car.
6 Q Is that a typical response for a child
7 who's been involved in an automobile collision
8 involving a truck?
9 A I think it's a normal response for anybody
10 who has been in an accident and hit by a truck. *LP*
11 Q Was the automobile collision that [REDACTED]
12 was involved in a traumatic one?
13 A Depends on how you define traumatic.
14 Q I'm asking you.
15 A Excuse me?
16 Q I'm asking you based on your definition of
17 traumatic.
18 A First of all, I don't think there's an
19 established definition of trauma in the context
20 you're asking. If you mean by trauma, it caused
21 some temporary fear and fright and anxiety, sure.
22 If it caused any lasting effects, in my opinion it

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1 did not. And it did not cause any significant
2 physical trauma.
3 Q Is it your opinion that the healthcare *LP*
4 providers that clinically diagnosed [REDACTED] with
5 selective mutism as a result of the automobile
6 collision can make that clinical diagnosis, but it
7 doesn't simply rise to the level required of a
8 forensic assessment?
9 A I think they can make the clinical
10 diagnosis of selective mutism. In my opinion it's
11 inappropriate to ascribe the cause of it when we
12 don't know what the cause is because there's been no
13 established etiology for the condition.
14 Q You'd agree with me that at some point
15 someone has to ascribe a cause for there to be a
16 starting point?
17 A That's not the way medicine works. You
18 start off with a hypothesis; let's look at the
19 question of whether trauma causes selective mutism.
20 Then do you research to see if you can establish
21 whether the hypothesis is true or not. To the best
22 of my review of the literature they've established

27 (Pages 102 to 105)

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<p style="text-align: right;">Page 106</p> <p>1 that the hypothesis is not true. There's no 2 established link between traumatic auto accidents 3 and selective mutism. You don't start with a cause. 4 You start with a hypothesis, and you try to do 5 research and science and experiments, if you can, to 6 either confirm or refute the hypothesis. In this 7 case the state of the literature currently is that 8 the hypothesis has been refuted or at least has not 9 been established. I think it's a little of both. 10 They say that some studies have ruled it out, and 11 some have simply said we don't know yet. There's 12 not enough evidence one way or the other to tell. 13 Q Let me review my notes. I'm just about 14 finished. I'm going to show you your CV, which I've 15 had marked as Exhibit 1, and have you look at page 16 5, which lists your areas of expertise in the civil 17 forensic arena. Is that right? 18 A Yes. 19 Q Would you agree with me that it doesn't 20 list selective mutism? 21 A It doesn't say expertise. It says 22 extensive experience with the following types of</p>	<p style="text-align: right;">Page 108</p> <p>1 A Putting aside the history and all that, 2 which appears mostly to be from other sources or 3 family, in terms of the formulation, I agree with 4 him that she met diagnostic criteria for selective 5 mutism after the accident. I agree with him that 6 she no longer meets it. I agree with him that she 7 meets criteria for obsessive compulsive disorder. I 8 disagree with him where he did not diagnose ADHD or 9 attention deficit hyperactivity disorder. I think 10 she has been diagnosed with that, and I don't 11 dispute that diagnosis. I agree with him that in 12 [REDACTED] case she presented with multiple 13 preexisting risk factors including family history of 14 preexisting anxiety and family stressors. I 15 disagree with him that the stress of the motor 16 vehicle accident was a significant contributing 17 factor to the onset of selective mutism. I disagree 18 with him that the trauma of the accident was a 19 significant contributing factor to the worsening of 20 [REDACTED] anxiety and obsessive compulsive disorder. 21 I agree with him that had the trauma not occurred, 22 [REDACTED] would likely still have needed treatment</p>
<p style="text-align: right;">Page 107</p> <p>1 evaluations. I think I indicated earlier that I 2 have not done any other specific to selective 3 mutism, although I think it has come up in a couple 4 of cases, so I would not list it as having extensive 5 experience in that area. 6 Q So the answer is yes, you agree with me 7 that it's not listed there? 8 A Excuse me? 9 Q So the answer is yes, you agree with me 10 that it's not listed there? 11 A Yes, I would agree with that. 12 Q In your CV you have listed the articles 13 that you've published and the areas in which you 14 have made presentations. None of them deal with 15 selective mutism. Is that right? 16 A Yes. 17 Q Since reading Dr. Zimnitzky's report have 18 you changed any of your opinions in this case? 19 A No. 20 Q Are you critical of his opinion other than 21 the fact that you disagree about the cause of 22 [REDACTED] selective mutism?</p>	<p style="text-align: right;">Page 109</p> <p>1 with psychotropic medications. I disagree with him 2 that at present he recommends weekly psychotherapy 3 with a child therapist experienced in trauma for a 4 period of six months. The accident happened five 5 years ago. I don't believe she is in any need of a 6 trauma specialist for six months at the present 7 time. I think she's essentially recovered from the 8 accident. That would be kind of the synopsis of 9 what I agree and disagree with. I realize your only 10 question was what I disagreed with, but I thought I 11 would add things I agreed with too. 12 Q Do you think she has any ongoing need for 13 therapy at all right now? 14 A I think it's in the category of it 15 probably would be helpful, but I don't think it's 16 necessary. She's still got a lot of multiple family 17 issues to deal with. 18 Q You anticipated where I was going. What 19 would be the reason for the therapy? 20 A Excuse me? 21 Q You anticipated where I was going. 22 A Yeah. I think her ongoing family issues</p>

28 (Pages 106 to 109)

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1 and a whole range of things she's been through. I	1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2 don't see any specific need for it as a consequence	2 I, Sharon D. Livingston, Registered
3 of the accident, certainly not five years out.	3 Professional Reporter, the officer before whom the
4 MS. PORWICK: I don't have any other	4 foregoing proceedings were taken, do hereby certify
5 questions. Mr. McCarron?	5 that the foregoing transcript is a record of the
6 MR. MCCARRON: Would you like to read and	6 proceedings; that said proceedings were taken by me
7 sign?	7 stenographically and thereafter reduced to
8 THE WITNESS: Yes, I'd like to read and	8 typewriting under my supervision; and that I am
9 sign.	9 neither counsel for, related to, nor employed by any
10 (Signature having not been waived, the	10 of the parties to this case and have no interest,
11 Deposition of MICHAEL K. SPODAK, M.D. was concluded	11 financial or otherwise, in its outcome.
12 at 2:18 P.M.)	12 IN WITNESS WHEREOF, I have hereunto set my
13	13 hand and affixed by notarial seal this 29th day of
14	14 April 2013.
15	15 My commission expires:
16	16 July 22, 2013
17	17
18	18
19	19
20	20 NOTARY PUBLIC IN AND FOR THE
21	21 STATE OF MARYLAND
22	22
Page 111	Page 113
1 ACKNOWLEDGEMENT OF DEPONENT	1 ERRATA SHEET
2 I, MICHAEL K. SPODAK, M.D., do hereby	2 IN RE: Farber, et al. v. Beveridge, et al.
3 acknowledge that I have read and examined the	3 RETURN BY: _____
4 foregoing testimony, and the same is a true, correct	4 PAGE LINE CORRECTION AND REASON
5 and complete transcription of the testimony given by	5 _____
6 me, and any corrections appear on the attached	6 _____
7 Errata Sheet signed by me.	7 _____
8	8 _____
9	9 _____
10 (DATE) (SIGNATURE)	10 _____
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